99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-746

COMPREHENSIVE MONEY LAUNDERING PREVENTION ACT

AUGUST 5, 1986.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. ST GERMAIN, from the Committee on Banking, Finance and Urban Affairs, submitted the following

REPORT

[To accompany H.R. 5176]

[Including cost estimate of the Congressional Budget Office]

together with

SUPPLEMENTAL VIEWS

The Committee on Banking, Finance and Urban Affairs, to whom was referred the bill (H.R. 5176) to amend title 31, United States Code, to establish new requirements and procedures in order to combat money laundering, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Comprehensive Money Laundering Prevention Act".

SEC. 2. STRUCTURING TRANSACTIONS TO EVADE REPORTING REQUIREMENTS PROHIBITED.

(a) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code (relating to records and reports on monetary instruments transactions) is amended by adding at the end thereof the following new section:

"§ 5324. Structuring transactions to evade reporting requirement prohibited

"No person shall—

"(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);

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"(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact; or

"(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction.".

(b) Clerical Amendment.—The table of sections for chapter 53 of title 31, United States Code, is amended by adding at the end thereof the following new item:

"5324. Structuring transactions to evade reporting requirement prohibited.".

SEC. 3. SEIZURE AND CIVIL FORFEITURE OF MONETARY INSTRUMENTS.

(a) Failure to Report Export or Import of Monetary Instrument.—The first sentence of section 5317(c) of title 31, United States Code (relating to seizure and forfeiture of monetary instruments in foreign commerce) is amended to read as follows: "If a report required under section 5316 with respect to any monetary instrument is not filed (or if filed, contains a material omission or misstatement of fact), the instrument and any interest in property, including a deposit in a financial institution, traceable to such instrument may be seized and forfeited to the United States Government.".

(b) Seizure and Civil Forfeiture of Monetary Instruments Involved in Structured Transaction Violation.—Section 5317 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) Seizure and Civil Forfeiture of Monetary Instruments Involved in Structured Transaction Violation.—

"(1) In general.—Any—

"(A) United States coins or currency (or such other monetary instrument as the Secretary of the Treasury may prescribe by regulation) involved in any violation of section 5313(a) or 5324; and

"(B) interest in property, including a deposit in a financial institution, traceable to such coins or currency (or other monetary instrument),

may be seized and forfeited to the United States Government in the manner provided in subchapter C of chapter 75 of the Internal Revenue Code of 1954.

"(2) Exception.—Paragraph (1) shall not apply if the owner of the property or the interest in property otherwise subject to seizure and forfeiture under paragraph (1) is—

"(A) a bona fide purchaser for value who took without notice of the violation;

"(B) a depository institution (as such term is defined in section 19(b)(1)(A) of the Federal Reserve Act); or

"(C) a financial institution regulated by the Securities and Exchange Commission.

"(3) Holds on property held by financial institutions.—Any—

"(A) United States coins or currency (and such other monetary instruments as the Secretary of the Treasury may prescribe by regulation); and

"(B) other interest in property, including any deposit,

which is in the possession or custody of any financial institution shall be held by such financial institution for a period of 15 days upon receipt of notice (in such form and in such manner as the Secretary shall prescribe) from the Secretary of the Secretary's intent to seize such coin or currency, instrument, or other property under this subsection.

"(4) Seizure of property held by financial institutions.—Upon a showing by the Secretary of the Treasury that there is probable cause to believe that any coin or currency, monetary instrument, or other interest in property, including any deposit, which is in the possession or custody of any financial institution is subject to forfeiture under paragraph (1), the district court of the United States for the district in which such property is held may issue an order authorizing the Secretary to seize such property.

"(5) Exemption from liability for imposition of hold.—The United States, any agency, department, or employee of the United States, any financial institution, and any officer, director, or employee of a financial institution shall be exempt from any liability to any other person which may otherwise arise for interest, damages, or any other type of compensation or relief, including injunctive and declaratory relief, in connection with or as a result of a hold being placed upon any property under paragraph (3).

"(6) LIABILITY OF FINANCIAL INSTITUTION TO THE UNITED STATES FOR FAILURE TO COMPLY.—Any financial institution which—

"(A) receives a notice under paragraph (3) with respect to any property or interest in property; and

"(B) after receipt of such notice, fails or refuses to hold, without reasonable cause, such property or interests until the earlier of—

"(i) the expiration of the 15-day period described in paragraph (3); or

"(ii) the presentation by the Secretary of a court order issued under paragraph (4),

shall be liable to the United States for an amount which is equal to the value of the property or interests which such institution failed or refused to hold.".

(c) TECHNICAL AND CONFORMING AMENDMENTS TO INTERNAL REVENUE CODE OF 1954.—

(1) Section 7302 of the Internal Revenue Code of 1954 (relating to property used in violation of internal revenue laws) is amended by adding at the end thereof the following new sentence: "The second and fourth sentences are hereby extended to coins, currency, and other monetary instruments (and to interests in property traceable to such instruments) seized pursuant to section 5317 of title 31, United States Code.".

(2) The heading for such section 7302 is amended by inserting "OR TITLE 31, UNITED STATES CODE" after "REVENUE LAWS".

(3) Section 7321 of the Internal Revenue Code of 1954 (relating to authority to seize property subject to forfeiture) is amended by inserting "and any coins, currency, or other monetary instrument (and any interest in property traceable to such instrument) subject to forfeiture under section 5317 of title 31, United States Code," after "this title".

(4) Section 7327 of the Internal Revenue Code of 1954 (relating to applicability of customs laws) is amended by inserting "and to forfeitures of coins, currency, and other monetary instruments (or interests in property traceable to such instruments) incurred or alleged to have been incurred under section 5317 of title 31, United States Code (except that, in the case of forfeitures under such section 5317, the customs laws shall apply only to the extent such laws are not inconsistent with any applicable provision of such section)" before the period.

(5) Section 7608(b)(1) of the Internal Revenue Code of 1954 (relating to authority of internal revenue enforcement officers to enforce certain internal revenue laws) is amended—

(A) by striking out "internal revenue laws or" and inserting in lieu thereof "internal revenue laws,"; and

(B) by inserting ", or any provision of section 5317 of title 31, United States Code, relating to seizures and forfeitures of coins, currency, and other monetary instruments (and interests in property traceable to such instruments)" after "responsible".

(6) Section 7608(b)(2) of the Internal Revenue Code of 1954 (relating to functions authorized to be performed by internal revenue enforcement officers) is amended—

(A) by adding at the end thereof the following new subparagraph:

"(D) to make seizures of coins, currency, and other monetary instruments (and interests in property traceable to such instruments) subject to forfeiture under section 5317 of title 31, United States Code.";

(B) by striking out "and" at the end of subparagraph (B); and

(C) by striking out the period at the end of subparagraph (C) and inserting in lieu thereof "; and".

(7) The item relating to section 7302 in the table of sections for part I of subchapter C of chapter 75 of the Internal Revenue Code of 1954 is amended by inserting "or title 31, United States Code" after "revenue laws".

SEC. 4. CIVIL MONEY PENALTY FOR STRUCTURED TRANSACTION VIOLATION.

(a) IN GENERAL.—Section 5321(a) of title 31, United States Code, is amended by adding at the end thereof the following new paragraph:

"(4) STRUCTURED TRANSACTION VIOLATION.—

"(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who knowingly or with reckless disregard for the provisions of section 5324 violates any provision of section 5324.

"(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed the amount of the coins and currency (or such other monetary instruments as the Secretary may prescribe) involved in the transaction with respect to which such penalty is imposed.

"(C) COORDINATION WITH FORFEITURE PROVISION.—The amount of any civil money penalty imposed by the Secretary under subparagraph (A) shall be reduced by the amount of any forfeiture to the United States under section 5317(d) in connection with the transaction with respect to which such penalty is imposed.".

(b) CONFORMING AMENDMENT.—Section 5321(c) of title 31, United States Code, is amended by striking out "section 5317(b)" and inserting in lieu thereof "subsection (c) or (d) of section 5317".

SEC. 5. BANKING REGULATORY AGENCY SUPERVISION OF RECORDKEEPING SYSTEMS.

(a) INSURED BANKS.—

(1) IN GENERAL.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end thereof the following new subsection:

"(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(1) COMPLIANCE PROCEDURES REQUIRED.—Each appropriate Federal banking agency shall prescribe regulations requiring insured banks to establish and maintain procedures reasonably designed to assure and monitor the compliance of such banks with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(2) EXAMINATIONS OF BANK TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(A) IN GENERAL.—Each examination of an insured bank by the appropriate Federal banking agency shall include a review of the procedures required to be established and maintained under paragraph (1).

"(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the insured bank.

"(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the appropriate Federal banking agency determines that an insured bank—

"(A) has failed to establish and maintain the procedures described in paragraph (1); or

"(B) has failed to correct any problem with the procedures maintained by such bank which was previously reported to the bank by such agency,

the agency shall issue an order in the manner prescribed in subsection (b) or (c) requiring such bank to cease and desist from its violation of this subsection or regulations prescribed under this subsection.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 8(i)(2)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(2)(i)) is amended by striking out "subsection (b) or (c)" and inserting in lieu thereof "subsection (b), (c), or (s)".

(b) INSTITUTIONS REGULATED BY THE BANK BOARD.—

(1) IN GENERAL.—Section 5(d) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)) is amended by adding at the end thereof the following new paragraph:

"(16) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(A) COMPLIANCE PROCEDURES REQUIRED.—The Board shall prescribe regulations requiring associations to establish and maintain procedures reasonably designed to assure and monitor the compliance of such associations with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(B) EXAMINATIONS OF ASSOCIATIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(i) IN GENERAL.—Each examination of an association by the Board shall include a review of the procedures required to be established and maintained under subparagraph (A).

"(ii) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the association.

"(C) ORDER TO COMPLY WITH REQUIREMENTS.—If the Board determines that an association—

"(i) has failed to establish and maintain the procedures described in subparagraph (A); or

"(ii) has failed to correct any problem with the procedures maintained by such association which was previously reported to the association by the Board,

the Board shall issue an order in the manner prescribed in paragraph (2) or (3) requiring such association to cease and desist from its violation of this paragraph or regulations prescribed under this paragraph.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 5(d)(8)(B)(i) of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)(8)(B)(i)) is amended by striking out "paragraph (2) or (3)" and inserting in lieu thereof "paragraph (2), (3), or (16)".

(c) INSURED THRIFT INSTITUTIONS.—

(1) IN GENERAL.—Section 407 of the National Housing Act (12 U.S.C. 1730) is amended by adding at the end thereof the following new subsection:

"(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(1) COMPLIANCE PROCEDURES REQUIRED.—The Corporation shall prescribe regulations requiring insured institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such institutions with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(2) EXAMINATIONS OF INSTITUTIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(A) IN GENERAL.—Each examination of an insured institution by the Corporation shall include a review of the procedures required to be established and maintained under paragraph (1).

"(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the insured institution.

"(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the Corporation determines that an insured institution—

"(A) has failed to establish and maintain the procedures described in paragraph (1); or

"(B) has failed to correct any problem with the procedures maintained by such institution which was previously reported to the institution by the Corporation,

the Corporation shall issue an order in the manner prescribed in subsection (e) or (f) requiring such institution to cease and desist from its violation of this subsection or regulations prescribed under this subsection.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 407(k)(3)(A) of the National Housing Act (12 U.S.C. 1730(k)(3)(A)) is amended by striking out "subsection (e) or (f) of this section shall forfeit" and inserting in lieu thereof "subsection (e), (f), or (s) of this section shall forfeit".

(d) INSURED CREDIT UNIONS.—

(1) IN GENERAL.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended by adding at the end thereof the following new subsection:

"(q) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

"(1) COMPLIANCE PROCEDURES REQUIRED.—The Board shall prescribe regulations requiring insured credit unions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such credit unions with the requirements of subchapter II of chapter 53 of title 31, United States Code.

"(2) EXAMINATIONS OF CREDIT UNIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

"(A) IN GENERAL.—Each examination of an insured credit union by the Board shall include a review of the procedures required to be established and maintained under paragraph (1).

"(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the credit union.

"(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the Board determines that an insured credit union—

"(A) has failed to establish and maintain the procedures described in paragraph (1); or

"(B) has failed to correct any problem with the procedures maintained by such credit union which was previously reported to the credit union by the Board,

the Board shall issue an order in the manner prescribed in subsection (e) or (f) requiring such credit union to cease and desist from its violation of this subsection or regulations prescribed under this subsection.".

(2) CIVIL MONEY PENALTIES FOR FAILURE TO MAINTAIN COMPLIANCE PROCEDURES.—Section 206(k)(2)(A) of the Federal Credit Union Act (12 U.S.C.

1786(k)(2)(A)) (as in effect on July 1, 1986) is amended by striking out "subsection (e) or (f)" and inserting in lieu thereof "subsection (e), (f), or (q)".

SEC. 6. FINANCIAL INSTITUTIONS AND MONETARY INSTRUMENTS.

(a) DEFINITION OF FINANCIAL INSTITUTIONS INCLUDES FOREIGN SUBSIDIARIES OF U.S. INSTITUTIONS.—Section 5312(a)(2) of title 31, United States Code (defining financial institutions) is amended—

(1) by redesignating subparagraphs (T) and (U) as subparagraphs (U) and (V), respectively; and

(2) by inserting after subparagraph (S) the following new subparagraph:

"(T) any foreign subsidiary or affiliate, as defined by the Secretary of the Treasury, of any entity described in this paragraph;".

(b) DEFINITION OF MONETARY INSTRUMENTS INCLUDES SUCH OTHER TRANSFERS AS THE SECRETARY MAY PRESCRIBE.—Section 5312(a)(3) of title 31, United States Code (defining monetary instruments) is amended—

(1) by adding at the end thereof the following new subparagraph:

"(C) as the Secretary may prescribe by regulation, any transfer of funds.";

(2) by striking out "and" at the end of subparagraph (A); and

(3) by striking out the period at the end of subparagraph (B) and inserting in lieu thereof "; and".

(c) UNITED STATES AGENCIES INCLUDES THE POSTAL SERVICE.—Section 5312(a)(2)(U) of title 31, United States Code (defining financial institutions) (as redesignated by subsection (a)) is amended by inserting before the semicolon at the end the following: ", including the United States Postal Service".

SEC. 7. ADDITIONAL REVIEW TIME UNDER THE CHANGE IN BANK CONTROL ACT AND CHANGE IN SAVINGS AND LOAN CONTROL ACT.

(a) CHANGE IN BANK CONTROL AMENDMENTS.—

(1) INITIAL EXTENSION AT DISCRETION OF AGENCY.—The first sentence of section 7(j)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(1)) is amended by striking out "or extending for up to another thirty days" and inserting in lieu thereof "or, in the discretion of the agency, extending for an additional 30 days".

(2) ADDITIONAL EXTENSIONS IN CASE OF INCOMPLETE OR INACCURATE NOTICE OR TO CONTINUE INVESTIGATION.—The second sentence of section 7(j)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(1)) is amended to read as follows: "The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—

"(A) the agency determines that any acquiring party has not furnished all the information required under paragraph (6);

"(B) in the agency's judgment, any material information submitted is substantially inaccurate;

"(C) the agency has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

"(D) the agency determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code.".

(b) CHANGE IN SAVINGS AND LOAN CONTROL AMENDMENTS.—

(1) INITIAL EXTENSION AT DISCRETION OF AGENCY.—The first sentence of section 407(q)(1) of the National Housing Act (12 U.S.C. 1730(q)(1)) is amended by striking out "or extending up to another thirty days" and inserting in lieu thereof "or, in the discretion of the Corporation, extending for an additional 30 days".

(2) ADDITIONAL EXTENSIONS IN CASE OF INCOMPLETE OR INACCURATE NOTICE OR TO CONTINUE INVESTIGATION.—The second sentence of section 407(q)(1) of the National Housing Act (12 U.S.C. 1730(q)(1)) is amended to read as follows: "The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—

"(A) the Corporation determines that any acquiring party has not furnished all the information required under paragraph (6);

"(B) in the Corporation's judgment, any material information submitted is substantially inaccurate;

"(C) the Corporation has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

"(D) the Corporation determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code.".

SEC. 8. MONETARY TRANSACTION RECORDKEEPING AND REPORTING AMENDMENTS.

(a) SECRETARY AUTHORIZED TO REQUIRE RECORDKEEPING FOR DOMESTIC COIN AND CURRENCY TRANSACTIONS.—Subchapter II of chapter 53 of title 31, United States Code (relating to records and reports on monetary instruments transactions) (as amended by section 2(a)) is amended by adding at the end thereof the following new section:

"§ 5325. Records of certain domestic coin and currency transactions

"(a) RECORDS AUTHORIZED TO BE REQUIRED UNDER PARTICULAR CIRCUMSTANCES.—Under such circumstances as the Secretary of the Treasury may prescribe by regulation, the Secretary may issue an order requiring any domestic financial institution—

"(1) to obtain such information as the Secretary may describe in such order concerning—

"(A) any transaction in which such financial institution is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) in amounts or denominations of $3,000 or more; and

"(B) any other person participating in such transaction;

"(2) to maintain a record of such information for such period of time as the Secretary may require; and

"(3) to file a report with respect to any transaction described in paragraph (1)(A) in the manner and to the extent specified in the order.

"(b) RECORDS REQUIRED FOR CERTAIN CASH TRANSACTIONS INVOLVING MORE THAN $3,000.—

"(1) IN GENERAL.—Whenever a domestic financial institution issues or sells a bank check, cashier's check, traveler's check, or money order in connection with a transaction which involves United States coins or currency in amounts or denominations of more than $3,000, such financial institution shall—

"(A) prepare and maintain, on a form prescribed by the Secretary of the Treasury, a record containing the information described in paragraph (2) with respect to each such transaction;

"(B) obtain any information which is necessary for such record from the person to whom such check or money order is issued or sold; and

"(C) obtain the signature of such person on such record.

"(2) INFORMATION REQUIRED TO BE OBTAINED FOR RECORD.—The record required to be prepared under paragraph (1) with respect to any transaction shall contain the following information:

"(A) The identity of the person to whom a check or money order described in paragraph (1) is issued or sold.

"(B) The date, amount, number, and type of such check or money order.

"(C) The method of payment for such check or money order by the person to whom such check or money order is issued or sold.

"(D) The aggregate amount of checks or money orders described in paragraph (1) which were issued or sold to or on behalf of such person (by any financial institution) on the business day on which such transaction occurs, to the extent such aggregate amount exceeds $10,000.

"(E) The name of the payee of such check or money order.

"(F) Such other information as the Secretary may prescribe.

"(3) REPORT REQUIRED IN CERTAIN CASES.—

"(A) IN GENERAL.—If, in the case of a transaction with respect to which a record is required to be prepared by a financial institution under paragraph (1)—

"(i) the aggregate amount described in paragraph (2)(D) is greater than $10,000; or

"(ii) the person to whom a check or money order described in paragraph (1) is issued or sold refuses to provide the information necessary to determine such aggregate amount,

the transaction shall be treated as a transaction with respect to which a report is required to be filed under section 5313(a).

"(B) RECORD REQUIRED TO BE FILED WITH REPORT.—The record prepared under paragraph (1) shall be filed with the report required under subparagraph (A) of this paragraph.

"(C) NOTICE OF FAILURE TO PROVIDE AGGREGATE AMOUNT.—If a report is required under this paragraph because the person described in subparagraph (A)(ii) refused to provide the information required for purposes of paragraph (2)(D), the report shall include a notice of such refusal.".

(b) INFORMATION REQUIREMENTS.—Subchapter II of chapter 53 of title 31, United States Code (as amended by subsection (a)) is amended by adding at the end thereof the following new section:

"§ 5326. Information requirements

"In each case in which a person is required to provide any information to a domestic financial institution or other person under any provision of this subchapter or any regulation prescribed under this subchapter, the information provided by such person shall be complete and accurate with respect to all material facts.".

(c) CLERICAL AMENDMENT.—The table of sections for chapter 53 of title 31, United States Code (as amended by section 2(b)) is amended by adding at the end thereof the following new items:

"5325. Records of certain domestic coin and currency transactions.
"5326. Information requirements.".

SEC. 9. CLARIFICATION OF "STATE OF MIND" STANDARD IN EFFECT FOR CIVIL MONEY AND CRIMINAL PENALTIES.

(a) CIVIL MONEY PENALTIES.—Section 5321(a)(1) of title 31, United States Code, is amended by striking out "willfully violating" and inserting in lieu thereof "who knowingly or with reckless disregard for a provision of this subchapter violates".

(b) CRIMINAL PENALTIES.—Subsections (a) and (b) of section 5322 of title 31, United States Code, are each amended by striking out "willfully" and inserting in lieu thereof "knowingly".

SEC. 10. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT.

(a) CLARIFICATION OF RIGHT OF FINANCIAL INSTITUTIONS TO REPORT SUSPECTED VIOLATIONS.—Section 1103(c) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3403(c)) is amended by adding at the end thereof the following new sentences: "The information which a financial institution, or any officer, employee, or agent of a financial institution, may provide under this subsection shall be limited to the names, addresses, and account numbers of persons, information concerning the persons and acts involved in any possible violation, and the nature of and a description of the possible violation. No information provided under this subsection may include financial records or, except to the extent provided in the preceding sentence, information identified with, or identifiable as being derived from, the financial record of any particular customer. Such information may be so disclosed notwithstanding the constitution of any State or any State or local law.".

(b) FINANCIAL RECORDS OF INSIDERS.—Section 1113 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413) is amended by adding at the end thereof the following new subsection:

"(l) CRIMES AGAINST FINANCIAL INSTITUTIONS BY INSIDERS.—Nothing in this title shall prohibit any financial institution or supervisory agency from providing any financial record of any officer, director, employee, or controlling shareholder (within the meaning of subparagraph (A) or (B) of section 2(a)(2) of the Bank Holding Company Act of 1956 or subparagraph (A) or (B) of section 408(a)(2) of the National Housing Act) of such institution to the Attorney General of the United States, to a State law enforcement agency, or, in the case of a possible violation of subchapter II of chapter 53 of title 31, United States Code, to the Secretary of the Treasury if there is reason to believe that such record is relevant to a possible violation by such individual of—

"(1) any law relating to crimes against financial institutions or supervisory agencies by directors, officers, employees, or controlling shareholders of financial institutions; or

"(2) any provision of subchapter II of chapter 53 of title 31, United States Code.".

SEC. 11. COMPLIANCE AUTHORITY FOR SECRETARY OF THE TREASURY AND RELATED MATTERS.

(a) IN GENERAL.—Section 5318 of title 31, United States Code, is amended—

(1) by inserting "(a) GENERAL POWERS OF SECRETARY.—" before "The Secretary of the Treasury";

(2) in paragraph (1), by inserting "except as provided in subsection (b)(2)," before "delegate";

(3) by striking out "and" at the end of paragraph (2);

(4) by inserting after paragraph (2) the following:

"(3) examine any books, papers, records, or other data of financial institutions relevant to the recordkeeping or reporting requirements of this subchapter;

"(4) summon a financial institution, an officer or employee of a financial institution (including a former officer or employee), or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (b); and";

(5) by redesignating paragraph (3) as paragraph (5); and

(6) by adding at the end the following new subsections:

"(b) Limitations on Summons Power.—

"(1) Scope of power.—The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection (a) only in connection with investigations for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National Housing Act, or chapter 2 of Public Law 91-508 (12 U.S.C. 1951 et seq.) or any regulation under any such provision.

"(2) Authority to issue.—A summons may be issued under subsection (a)(4) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

"(c) Administrative Aspects of Summons.—

"(1) Production at designated site.—A summons issued pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the financial institution operates or conducts business in the United States.

"(2) Fees and travel expenses.—Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States.

"(3) No liability for expenses.—The United States shall not be liable for any expense, other than an expense described in paragraph (2), incurred in connection with the production of books, papers, records, or other data under this section.

"(d) Service of Summons.—Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may prescribe by regulation.

"(e) Contumacy or Refusal.—

"(1) Referral to attorney general.—In case of contumacy by a person issued a summons under paragraph (3) or (4) of subsection (a) or a refusal by such person to obey such summons, the Secretary of the Treasury shall refer the matter to the Attorney General.

"(2) Jurisdiction of court.—The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which—

"(A) the investigation which gave rise to the summons is being or has been carried on;

"(B) the person summoned is an inhabitant; or

"(C) the person summoned carries on business or may be found,

to compel compliance with the summons.

"(3) Court order.—The court may issue an order requiring the person summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding.

"(4) Failure to comply with order.—Any failure to obey the order of the court may be punished by the court as a contempt thereof.

"(5) Service of process.—All process in any case under this subsection may be served in any judicial district in which such person may be found.".

(b) Conforming Amendment.—Sections 5321 and 5322 of title 31, United States Code, are each amended by striking out "5318(2)" each place such term appears and inserting in lieu thereof "5318(a)(2)".

SEC. 12. AMENDMENTS RELATING TO EXEMPTIONS GRANTED FOR MONETARY TRANSACTION REPORTING REQUIREMENTS.

Section 5318 of title 31, United States Code (as amended by section 11) is amended by adding at the end thereof the following new subsections:

"(f) Review of Exemptions.—In any case in which there is a change in management or control of a financial institution, the Secretary of the Treasury shall review each currently outstanding exemption granted by such institution under subsection (a)(3) not later than 30 days after the date such change in management or control occurs.

"(g) Written and Signed Statement Required.—No person shall qualify for an exemption under subsection (a)(5) unless the relevant financial institution—

"(1) prepares and maintains a statement which—

"(A) describes in detail the reasons why such person is qualified for such exemption; and

"(B) contains the signature of such person; and

"(2) certifies to the Secretary that such person is qualified for such exemption.".

SEC. 13. PENALTIES FOR FAILURE TO COMPLY WITH CERTAIN RECORDKEEPING REQUIREMENTS.

(a) Insured Banks.—Section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b) is amended by adding at the end thereof the following new subsection:

"(j) Civil and Criminal Penalties.—

"(1) Civil penalty.—Any insured bank and any director, officer, or employee of an insured bank who knowingly or with reckless disregard for any regulation prescribed under subsection (b) of this section violates any such regulation shall be liable to the United States for a civil penalty of not more than $10,000. Any penalty imposed under this paragraph shall be assessed, mitigated, and collected in the manner provided in subsections (b) and (c) of section 5321 of title 31, United States Code.

"(2) Criminal penalty.—Whoever knowingly violates subsection (b) of this section or any regulation prescribed under such subsection shall be fined not more than $250,000 or imprisoned for not more than 5 years, or both.".

(b) Insured Institutions.—Section 411 of the National Housing Act (12 U.S.C. 1730d) is amended by adding at the end thereof the following new sentence: "The penalties provided in subsection (j) of section 21 of the Federal Deposit Insurance Act for violations of any regulation prescribed under subsection (b) of such section shall apply with respect to any violation of any regulation prescribed under this section which corresponds to the regulation prescribed under such subsection (b).".

SEC. 14. EXTENSION OF TIME LIMITATIONS FOR ASSESSMENT OF CIVIL PENALTY.

(a) In General.—Section 5321(b) of title 31, United States Code, is amended to read as follows:

"(b) Time Limitations for Assessments and Commencement of Civil Actions.—

"(1) Assessments.—The Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.

"(2) Civil actions.—The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at any time before the end of the 2-year period beginning on the later of—

"(A) the date the penalty was assessed; or

"(B) the date any judgment becomes final in any criminal action under section 5322 in connection with the same transaction with respect to which the penalty is assessed.".

SEC. 15. DUTY TO INVESTIGATE APPLICANTS FOR CHANGE IN CONTROL APPROVAL.

(a) Change in Bank Control Amendments.—Section 7(j)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(2)) is amended—

(1) by striking out "(2)" and inserting in lieu thereof "(2)(A) Notice to State Agency.—"; and

(2) by adding at the end thereof the following new subparagraphs:

"(B) Investigation of Principals Required.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall—

"(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

"(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

"(C) Report.—The appropriate Federal banking agency shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The agency shall retain such written report as a record of the agency.".

(b) Change in Savings and Loan Control Amendments.—Section 407(q)(2) of the National Housing Act (12 U.S.C. 1730(q)(2)) is amended—

(1) by striking out "(2)" and inserting in lieu thereof "(2)(A) Notice to State Agency.—"; and

(2) by adding at the end thereof the following new subparagraphs:

"(B) Investigation of Principals Required.—Upon receiving any notice under this subsection, the Corporation shall—

"(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

"(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

"(C) Report.—The Corporation shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The Corporation shall retain such written report as a record of the Corporation.".

SEC. 16. PUBLIC COMMENT ON CHANGE OF CONTROL NOTICES.

(a) Change in Bank Control Amendments.—Section 7(j)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(2)) is amended by adding after subparagraph (C) (as added by section 15(a)(2)) the following new subparagraph:

"(D) Public Comment.—Upon receiving notice of a proposed acquisition, the appropriate Federal banking agency shall, within a reasonable period of time—

"(i) publish the name of the insured bank proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

"(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the bank proposed to be acquired is located, before final consideration of such notice by the agency,

unless the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such bank.".

(b) Change in Savings and Loan Control Amendments.—Section 407(q)(2) of the National Housing Act (12 U.S.C. 1730(q)(2)) is amended by adding after subparagraph (C) (as added by section 15(b)(2)) the following new subparagraph:

"(D) Public Comment.—Upon receiving notice of a proposed acquisition, the Corporation shall, within a reasonable period of time—

"(i) publish the name of the insured institution proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

"(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the institution proposed to be acquired is located, before final consideration of such notice by the Corporation,

unless the Corporation determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such institution.".

SEC. 17. INVESTIGATIONS AND ENFORCEMENT UNDER THE CHANGE IN CONTROL ACTS.

(a) Change in Bank Control Amendments.—Section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) is amended—

(1) by redesignating paragraphs (15) and (16) as paragraphs (16) and (17), respectively; and

(2) by inserting after paragraph (14) the following new paragraph:

"(15) Investigative and Enforcement Authority.—

"(A) Investigations.—The appropriate Federal banking agency may exercise any authority vested in such agency under section 8(n) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the agency, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

"(B) Enforcement.—Whenever it appears to the appropriate Federal banking agency that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

"(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or "(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

"(C) JURISDICTION.—

"(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the appropriate Federal banking agency under subparagraph (A) as such courts have under section 8(n).

"(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief granted under this paragraph shall be granted without requiring the posting of any bond.".

(b) CHANGE IN SAVINGS AND LOAN CONTROL AMENDMENTS.—Section 407(q) of the National Housing Act (12 U.S.C. 1730(q)) is amended—

(1) by redesignating paragraphs (16) and (17) as paragraphs (17) and (18), respectively; and

(2) by inserting after paragraph (15) the following new paragraph:

"(16) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

"(A) INVESTIGATIONS.—The Corporation may exercise any authority vested in the Corporation under paragraph (2) or (3) of subsection (m) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the Corporation, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

"(B) ENFORCEMENT.—Whenever it appears to the Corporation that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

"(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

"(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

"(C) JURISDICTION.—

"(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the Corporation under subparagraph (A) as such courts have under paragraph (2) or (3) of subsection (m).

"(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief under this paragraph shall be granted without requiring the posting of any bond.".

SEC. 18. DISCUSSIONS TO DEVELOP INTERNATIONAL INFORMATION EXCHANGE SYSTEM TO ELIMINATE MONEY LAUNDERING.

(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Board of Governors of the Federal Reserve System, shall initiate discussions with the central banks or other appropriate governmental authorities of other countries and propose that an information exchange system be established to assist the efforts of each participating country to eliminate the international flow of money derived from illicit drug operations and other criminal activities.

(b) REPORT REQUIRED.—Before the end of the 9-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall prepare and transmit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the results of negotiations initiated pursuant to subsection (a).

SEC. 19. INCREASE IN MAXIMUM CRIMINAL FINE FOR CERTAIN OFFENSES.

Section 5322(b) of title 31, United States Code, is amended by striking out "$500,000" and inserting in lieu thereof "$1,000,000 if the person is an individual (and not more than $5,000,000 in any other case)".

SEC. 20. REGULATIONS RELATING TO CUMULATION OF OFFENSES FOR FAILURE TO REPORT EXPORT OR IMPORT OF MONEY.

Section 5316 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(d) CUMULATION OF CLOSELY RELATED EVENTS.—The Secretary of the Treasury may prescribe regulations under this section defining the term 'at one time' for purposes of subsection (a). Such regulations may permit the cumulation of closely related events in order that such events may collectively be considered to occur at one time for the purposes of subsection (a).".

SEC. 21. EFFECTIVE DATES.

(a) The amendments made by sections 2 and 8 shall apply with respect to transactions for the payment, receipt, or transfer of United States coins or currency or other monetary instruments completed after the end of the 3-month period beginning on the date of the enactment of this Act.

(b) The amendments made by sections 3 and 4 shall apply with respect to violations committed after the end of the 3-month period beginning on the date of the enactment of this Act.

(c) The regulations required to be prescribed under the amendments made by section 5 shall take effect at the end of the 3-month period beginning on the date of the enactment of this Act.

(d) The amendments made by sections 9, 13, 14, and 19 shall apply with respect to violations committed after the date of the enactment of this Act.

(e) The amendments made by sections 7, 15, 16, and 17 shall apply with respect to notices of proposed acquisitions filed after the date of the enactment of this Act.

(f) Any regulation prescribed under the amendments made by section 20 shall apply with respect to transactions completed after the effective date of such regulation.

HISTORY AND NEED FOR THE LEGISLATION

H.R. 5176, the Comprehensive Money Laundering Prevention Act, was ordered reported, with amendments, by the Banking Committee by a vote of 47–0 on July 22, 1986. Prior to the Committee's action, the Subcommittee on Financial Institutions Supervision, Regulation and Insurance considered H.R. 5176 and ordered the bill reported to the full Committee unanimously, by voice vote, on July 17, 1986, following adoption of four amendments.

Prior to the Committee markup, four days of comprehensive legislative hearings were held on H.R. 5176 by the Subcommittee. Congressman J.J. Pickle, Chairman of the Subcommittee on Oversight of the Ways and Means Committee, was the Subcommittee's lead-off witness. The Committee has incorporated certain provisions of his bill, H.R. 4537, including those provisions relating to the structuring of currency transactions and the seizure and forfeiture of certain assets obtained by illegal means.

The Subcommittee heard 15 witnesses during its four days of hearings, including a Federal Reserve Board Governor, and representatives from the IRS Criminal Investigation and Examination Divisions, Federal Home Loan Bank Board, Federal Deposit Insurance Corporation, Office of Comptroller of the Currency, Drug Enforcement Administration, the former Executive Director of the President's Commission on Organized Crime, American Bar Association, American Bankers Association, Association of the Bar of the City of New York, an Assistant U.S. Attorney, and a former money launderer. Written testimony was also received from the American Civil Liberties Union.

In addition, the Administration's position on money laundering was articulated by the testimony of the Department of Justice's

Criminal Division and the Assistant Secretary (Enforcement and Operations) of the Department of the Treasury.

There has been widespread interest in the problem of money laundering and the ways to deal with this problem, as evidenced by the fact that 31 Members of the Committee have cosponsored H.R. 5176, and by the fact that it was ordered reported out of the Committee by the overwhelming vote of 47–0.

H.R. 5176, introduced by Chairman St Germain, is a consensus bill which was drafted to take into consideration the provisions contained in money laundering bills introduced by a number of members of the Banking Committee. Also, the Committee incorporated several provisions of H.R. 5077, which was reported out by the Subcommittee on Crime of the House Judiciary Committee, chaired by Congressman William Hughes.

As reported by the Banking Committee, H.R. 5176:

(1) Subjects persons to criminal liability for structuring a currency transaction in order to evade the reporting requirements of the Bank Secrecy Act;

(2) Authorizes, for the first time, the seizure and forfeiture of cash or property related to such cash, for causing a financial institution to fail to file a required Bank Secrecy Act report to the government;

(3) Substantially increases, under certain circumstances, the maximum fine for a criminal violation of the Bank Secrecy Act by increasing from $500,000 to $1,000,000 for individuals and to $5,000,000 for all others;

(4) Directs banking regulators to prescribe regulations requiring insured financial institutions to establish and maintain Bank Secrecy Act compliance reporting procedures;

(5) Amends the Change in Bank Control Act to give regulators additional time to investigate acquirers of banks and savings and loans; requires regulators to conduct thorough investigations and makes other changes;

(6) Directs the Secretary of the Treasury to take certain corrective actions pursuant to Bank Secrecy Act authority;

(7) Amends the Right to Financial Privacy Act to clarify the type and amount of information a financial institution can voluntarily give to law enforcement authorities without notifying the customer. Also exempts from the notification requirements insiders of financial institutions (i.e., officer, director, employee or controlling shareholder).

(8) Amends the exemption requirements under the Bank Secrecy Act by (1) requiring the Secretary of the Treasury to review such exemptions whenever there is a change in management or control of a financial institution; and (2) requires the signature of the person for whom the exemption is granted and certification by the financial institution to such person's eligibility.

(9) Provides the Secretary of the Treasury with civil summons authority to assist in carrying out Bank Secrecy Act responsibilities; and

(10) Requires the Secretary of the Treasury, in consultation with the Federal Reserve, to develop an international information exchange system to eliminate the international flow of

money derived from illicit drug operations and other illegal activities.

Sixteen years ago the Committee on Banking, in its efforts to wage war on organized crime, drug traffickers, tax evaders, and various other white collar criminals, reported out what is commonly known as the Bank Secrecy Act. At that time, and many times since, this Committee, to ensure compliance with the Act, has encouraged, consulted, and issued directions to the Department of the Treasury (which is charged with implementation of the Act), the banking regulators (who have been delegated certain responsibilities), the banks, and other financial institutions.

Unfortunately, the hearings on money laundering, beginning with the Bank of Boston hearing in April 1985, have shown that a major law enforcement tool has been rendered a virtual nullity by an industry that didn't seem to care and by a regulatory structure that proved to be ineffective.

The Committee fully agrees with what the Chairman of this Committee, Fernand J. St Germain, said in his opening statement at the Bank of Boston hearings:

> I want the banking industry, the regulators, and the American public to understand that we are going to insist on full enforcement and compliance with the Bank Secrecy Act and we will not tolerate the selective compliance and enforcement that has damaged the effectiveness of the act as a law enforcement weapon.

He further said:

> . . . bank officials need not be corrupt or into conspiracies for organized crime; it is enough that bank officials . . . be sloppy and that they operate without controls and without really caring.

The Bank of Boston's guilty plea, coupled with this Committee's investigation in that matter, has caused banks to flood the Office of Enforcement and Operations of the Treasury Department with attempts to negotiate civil money penalties for violations of the Bank Secrecy Act. This sudden repentance, which has been dubbed by some as "Dial-A-Confession," has resulted in civil penalties assessed against 19 banks since June of last year. (The penalties imposed against those banks exceeded $13 million.) Indeed, Bank of Boston is not alone. Many of the 19 are among the largest banks in the country, with penalties assessed going as high as $4.75 million against the Bank of America in January 1986.

According to the Treasury, as of July 2, 1986, there were 177 investigations that the IRS Criminal Investigation Division had authorized for possible criminal violations of the currency transaction reporting requirements. All but 25 involve financial institutions that are regulated by a bank supervisory agency. The Committee finds these statistics appalling, and ample justification of an increase in the amount of fines for violation of the Act, as set forth in Section 19 of H.R. 5176, from $500,000 to $1 million for individuals and $5 million for financial institutions, for a criminal violation.

DRUG TRAFFICKING AND MONEY LAUNDERING

Without access to the American financial system, drug dealers are crippled and their activities are laid open to law enforcement agencies.

At the full Committee markup of H.R. 5176, Chairman Fernand J. St Germain said:

> This nation faces a multitude of problems, foreign and domestic, but at the moment I can think of none more critical or more tragic than the growing epidemic of drugs. All of us in the Congress have a responsibility to do whatever we can do to slow, if not end, this traffic. In H.R. 5176, the Banking, Finance and Urban Affairs Committee is meeting its responsibility.

Passage of this legislation, together with other proposed legislative remedies outside the jurisdiction of this Committee, however, would substantially paralyze the international drug trafficker.

Money Laundering Defined.—The President's Commission on Organized Crime has defined money laundering as the "process by which one conceals the existence, illegal source, or illegal application of income, and then disguises that income to make it appear legitimate." In other words, laundering involves the hiding of the paper trail that connects income or money with a person in order for such person to evade the payment of taxes, avoid prosecution, or obviate any forfeiture of his illegal drug income or assets. One of the biggest problems presently facing law enforcement officials is the laundering of money derived from criminal activity.

Size of Problem.—Money laundering is big business. Just how big nobody knows for sure, because drug rings and organized crime families do not prepare annual reports. The President's Commission on Organized Crime's interim report entitled *The Cash Connection* shows that Americans spend between $50 and $75 billion each year to buy illegal drugs; and there are estimates that this figure is increasing, with no end in sight. This would make the illegal drug trade a bigger operation than all but one of the *Fortune* 500 companies, larger even than General Motors, and this is just from drug trafficking.

Money laundering is the life blood of the drug traffickers and traditional organized crime. Unfortunately, the problem has grown in size and complexity. Evidence obtained by the Committee indicates that there is more money being laundered than ever before, involving more people, and the schemes to wash dirty money are now often so sophisticated that it is not unusual to find an intricate web of domestic and foreign bank accounts, dummy corporations and other business entities through which funds are moved, almost instantaneously, by means of electronic fund transfers.

Perhaps even more disturbing, the Committee has heard testimony that there are an increasing number of professional individuals such as lawyers, accountants and bankers at all levels from tellers to senior officials, who are willing to become active participants in money laundering. The volume to which money laundering has escalated has out of necessity created a new profession within criminal circles, i.e., the professional money launderer. Drug money profits have become so huge that drug dealers have turned over their billions of dollars in cash to the experts for a fee to launder their dirty money.

Money Laundering Schemes.—There are as many ways of laundering money as there are individuals willing to do it. As noted, there are problems, especially for the large drug trafficking network which has to put volumes of cash generated from street sales of drugs into something more negotiable than boxes of ten, twenty and fifty dollar bills. Typically, a drug trafficker needs to exchange small bills for large ones. He does this by a variety of means, such as by purchasing cashier's checks in false names, or depositing cash into dummy accounts and then transferring funds by wire (in many cases) to foreign sources. To accomplish these ends the drug dealer has to have access to banks and other financial institutions.

Many countries have so-called bank secrecy laws which provide the drug dealer with a haven for his laundered money. Once the dirty money is out of the United States it may be deposited into various foreign bank accounts, such as in Panama, the Cayman Islands, or other jurisdictions which have strict bank secrecy laws. This, of course, will not only complicate tracing the cash, it may very well put an end to any ongoing investigation. Once the foreign bank account is established, the money may be transferred to another bank account in another foreign country, which would further shield the illegal transaction from U.S. authorities. Finally, the money may either be physically transported back into the United States and declared, or be disguised as the proceeds of a loan granted to a U.S. citizen or corporation (who will be the real owner of the laundered funds), or wired to a U.S. recipient (again, the real owner) as a form of legitimate payment such as for "services" rendered. Thus, cash that is illegally generated in the United States can be effectively hidden from law enforcement authorities with little or no taxes paid, and prosecution for the laundering of such money will have been avoided.

AMENDMENTS TO THE BANK SECRECY ACT

1. BACKGROUND

The Bank Records and Foreign Transaction Act, Public Law 91-508, which was reported out by this Committee and enacted into law on October 26, 1970, is commonly known as the Bank Secrecy Act (hereinafter the Act). Tilte II of the Act (Currency and Foreign Transactions Reporting Act) require banks and other financial institutions, and in some instances private individuals, to report certain of their foreign and domestic financial transactions to the federal government. Failure to report these transactions can lead to criminal and civil penalties, and in limited situations, civil forfeiture.

The primary purpose of the reporting requirements of the Bank Secrecy Act is to identify the sources, volumes and movements of United States currency being transported into or out of the country or being deposited in financial institutions, in order to aid law enforcement officials in the detection and investigation of criminal, tax and regulatory violations. It is a primary tool for tracking the financial resources associated with these criminal activities.

The three reports required under the Bank Secrecy Act pursuant to regulations implemented by the Secretary of the Treasury are: (1) the Currency Transaction Report (CTR) that must be filed by banks and other financial institutions whenever a currency transaction over $10,000 occurs; (2) the Currency or Monetary Instruments Report (CMIR) whenever currency or monetary instruments over $10,000 are taken into or out of the United States; and (3) the Foreign Bank Account Report (FBAR) whenever a person has a financial interest in or signature authority over a foreign financial account in excess of $10,000 in value.

In addition to the reporting requirements, Title I of the Act requires that certain records be made and retained by financial institutions. Such records include, for example, copies of checks, extensions of credit over $5,000, identification of the purchaser of each certificate of deposit, etc. These reporting and recordkeeping requirements were put into place in 1970 following this Committee's thorough hearings regarding the widespread use of secret foreign bank accounts which were used by white-collar criminals, which served as the financial underpinning of organized criminal operations in the United States, and which were used by citizens of this country to evade the payment of income taxes.

2. H.R. 5176 AMENDMENTS TO THE BANK SECRECY ACT

In the late 1970's as narcotics trafficking in this country began to rise in alarming proportions, a number of prosecutions involving the laundering of drug money through structured cash conversion schemes were conducted in several United States district courts. These schemes are often dubbed "smurfing." One who does the smurfing is called a "smurf." (The term is derived from a popular children's TV cartoon, and, as applied to money laundering, suggests one who is a runner for a large "smurfing" ring.) Typically, the smurf (or runner) goes to several financial institutions and converts large amounts of drug cash into negotiable instruments (i.e., cashier's checks) for amounts of less than $10,000 in order to avoid the currency reporting requirements of the Bank Secrecy Act.

Under present Treasury regulations, only financial institutions have the duty to file reports for currency transactions over $10,000. This has created some problems for the government in the prosecution of these cases. A number of United States appellate court decisions have issued conflicting opinions as to whether smurfing schemes are a crime. In some judicial circuits, money launderers have been successfully prosecuted for causing financial institutions not to file reports on such multiple currency transactions. In such cases, defendants are charged with violations of 18 U.S.C. 2 (aiding and abetting or causing another to commit an offense) and Section 1001 (concealing from the government a material fact by a trick, scheme, or device).[1]

In contrast, other cases have held that the Act and its regulations impose no duty on the customer to inform the financial institution of the structured nature of the transactions, that the reporting duties are placed solely upon the financial institution, and therefore, only a financial institution can directly violate the reporting requirements.[2]

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[1] See *United States* v. *Tobon-Builes*, 706, F.2d 1092 (11th Cir. 1983).

The Committee believes that Section 2 of H.R. 5176 would resolve the legal issues raised by the various circuit courts by expressly subjecting to potential liability a person who causes or attempts to cause a financial institution to fail to file a required report or who causes a financial institution to file a required report that contains material omissions or misstatements of fact. In addition, it would create the offense of structuring a transaction to evade the reporting requirements, without regard for whether an individual transaction is, itself, reportable under the Bank Secrecy Act.

Section 2 would also add a much-needed attempt provision to the Bank Secrecy Act. Under current law, a financial institution is not required to report a currency transaction until 15 days after the transaction has taken place; therefore, a reporting violation does not occur until (1) 15 days have passed since the time of the transaction; and (2) the financial institution has failed to file a report. Prosecution under these circumstances may prove to be difficult. First, after 15 days the money launderers may have fled, and the investigative trail may be cold. Second, an individual who has attempted to avoid the reporting requirements may escape liability if the financial institution, despite the efforts of the money launderer, files a timely, correct report. The proposed attempt provision would cure these present flaws by: (1) putting into motion the procedures for seizure and forfeiture authorized under Section 3 of the bill, and (2) subjecting individuals who attempt to frustrate the reporting requirements of the Act to potential criminal liability at the time of their attempt and not 15 days later.

The Committee's action is supported by extensive testimony in which witnesses described a number of money laundering schemes. One witness, a so-called smurf, testified that in a day and a half he and an associate laundered $200,000 in cash by purchasing cashier's checks, each check for less than $10,000. This event took place in Los Angeles, California, by going into several banks on Wilshire Boulevard. These individuals, from Miami, had no California identification, and none was asked for by any teller. The witness further testified that he opened 12 bank accounts under his own name in his hometown in Miami, and proceeded to launder $100,000 in cash daily for several months by converting cash into cashier's checks or money orders for amounts under $10,000. No tellers ever questioned him on these transactions. He was one of at least six persons working for a high-level money launderer. Each laundered at least $100,000 per day, usually 6 days per week. The witness' boss did one of three things with the checks and money orders. He would either:

1. Have them flown out of the United States to Colombia by courier on commercial airlines (it is obviously easier to conceal such negotiable instruments than to fly thousands of dollars in cash on private aircraft); or

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[2] See *United States* v. *Anzalone,* 766 F.2d 676 (1st Cir. 1985); *United States* v. *Varbel,* 780 F.2d 758 (9th Cir. 1986); and *United States* v. *Denemark,* 779 F.2d 1559 (11th Cir. 1986).

2. Provide the checks to the money suppliers in Miami who gave him the cash to launder (minus his fee, usually 4%); or
3. Deposit the instruments (with forged endorsements) into accounts in local banking institutions.

An Assistant U.S. Attorney in Miami told the Committee that this group was just one of many such organizations operating throughout the Miami area. He stressed the point that these individuals were professional money launderers—they were *not* drug dealers, although it was obvious the cash they received to launder came from drug dealers. This highlights once again what was noted earlier, i.e., that the laundering of money is itself a specialty within the criminal world, although most is drug-related; and it is highly complex and sophisticated financial operational network that deceives financial institutions and eludes law enforcement authorities. The Committee bill strikes a blow at these operations, gives banks and other financial institutions the opportunity to help combat these illegal activities, and provides law enforcement agencies additional legal and regulatory tools to fight the drug epidemic that currently pervades all walks of life in our society.

SEIZURE AND FORFEITURE

Seizure and Forfeiture of Currency.—The Committee's bill would allow property related to a violation under 31 U.S.C. 5313(a) involving a Currency Transaction Report to be seized and forfeited. Section 3 of H.R. 5176 is directed primarily at a person who launders money or attempts to launder money in collusion with a financial institution, who intentionally subverts or who attempts to subvert the reporting requirements by causing or attempting to cause an innocent or otherwise unwitting financial institution to fail to file a report or to file a materially incomplete or inaccurate report, or who structures a transaction for the purpose of evading the reporting requirements. The current used or intended to be used, or the interest in the property traceable to such currency would be subject to seizure and forfeiture. The fact that violation occurred without the knowledge of the owner could be raised as a defense to forfeiture.

Monies and Property Reached.—This forfeiture provision is intended to reach interests in property which can be clearly traced to the currency that gave rise to the section 5313(a) violation. It would reach monies deposited in bank accounts or other types of financial accounts, *e.g.,* checking accounts, money market accounts, and certificates of deposit, and would apply to real and personal property that had been purchased by a violator with a monetary instrument that gave rise to a section 5313(a) violation. However, the provision is not intended to apply to the property interests of innocent third parties. It would not apply to cash received by an innocent bank, in which the money launderer no longer had any property interest, that a money launderer had used in the purchase of a cashier's check, but it would apply to the cashier's check in the hands of the money launderer or in the hands of the person on whose behalf the money launderer was acting. The fact that a person was a bona fide purchaser for value without knowledge of the violation would be a defense to forfeiture.

The Committee is convinced that new forfeiture authority is needed because current forfeiture authority is an inadequate tool against money laundering. Forfeiture authority under federal drug laws, for example, requires a finding of probable cause to believe that the money was used in connection with a violation of the drug laws. Laundered money is frequently connected to violations of drug laws; however, money laundering is also used for non-drug criminal activity and, even where the operation is part of a drug trafficking organization, the money laundering can be arranged so that it is difficult, if not impossible, to prove such a connection. The Committee record is replete with such occurrences.

Procedural Safeguards.—H.R. 5176 establishes a procedure that must be strictly followed when property is seized from a domestic financial institution examined by a federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission. The Secretary must obtain a court order authorizing such seizure. The order shall be issued if the magistrate has probable cause to believe that the property is subject to forfeiture.

It provides for the issuance of a notice from the Secretary that requires the institution to hold the funds until the court order is received. The government has 15 days to obtain the court order or the institution may release the funds. The bill specifically relieves the financial institution from liability to the customer for holding the funds pending the court order or the 15 day period.

This procedure was included in recognition of the need for immediate action when the government becomes aware of property subject to forfeiture in light of the speed with which financial institutions can wire transfer funds outside the United States and beyond the reach of law enforcement authorities. It also clarifies the liability of a financial institution that may be instructed by the customer to transfer funds out of the institution at the same time it is instructed by the government to hold the funds. The procedure also militates against wrongful seizures.

Financial institutions are also subject to a penalty, in a sum equal to the value of the property or interests subject to seizure, if the institution fails to comply with the notice without reasonable cause.

The Committee appreciates and is fully aware that seizure and forfeiture of one's assets is a drastic action. It is an area where given such authority, governmental agencies, in their zest to crack down on criminal activity, may overstep the bounds of prudence and cause great hardship to the innocent. The 15-day holding period provided in the bill is designed to further protect the rights of the owner and to avoid an unlawful and precipitous taking of assets by the government, while at the same time recognizing law enforcement's concerns regarding the practicality of the drug traffickers' ability to instantly transfer funds out of the country.

Committee Oversight.—It is the Committee's intention that seizure and forfeiture actions be taken in situations similar to and hereinafter described in this report. In addition, the Committee expresses its desire that actions involving amounts of $25,000 or less be taken sparingly and with good cause. In that regard, the Committee will examine those cases very carefully.

Seizure of Assets Involving Monetary Instruments.—H.R. 5176 would also amend 31 U.S.C. 5316 to provide express authority to seize assets clearly traceable to a monetary instrument over $10,000 being transported or which has been transported into or out of the country and for which a required report (CMIR) has not been filed with Customs. The violation of Section 5316 need not be willful (under present law) in order for an unreported monetary instrument to be subject to seizure and forfeiture. Customs law relating to seizure, forfeiture and disposition of property continues to apply, to the extent not inconsistent with the Bank Secrecy Act, to forfeitures under this subsection.

Just as current drug-related seizure and forfeiture laws are inadequate in money laundering cases, so too tax assessment and collection statutes under Title 26 (the U.S. Tax Code) are less than an adequate tool against money laundering. A jeopardy tax assessment and collection, for example, requires proof that a Title 26 tax deficiency is in jeopardy. Since only the tax deficiency money is collectible under such authority, much of the laundered money is unreachable. In contrast, the proposed forfeiture authority is likely to be a valuable tool against money laundering.

Following are three examples demonstrating how effective the forfeiture authority can be:

(1) An investigation developed evidence that suspected drug traffickers had knowingly caused several banks not to file Currency Transaction Reports on transactions totaling more than $50 million. The investigation did not develop sufficient admissible evidence, however, to connect the laundered moey to violations of the drug laws. Under these circumstances the money is not forfeitable under current forfeiture authority for drug-related offenses.

Under H.R. 5176, the entire $50 million, or assets traceable to it, could be seized and forfeited. It is important to note, however, that such assets in the hands of a bona fide purchaser for value would not have been subject to foreiture;

(2) A south Florida money laundering specialist, Mr. Herman Botero, laundered $57 million over 18 months through various Miami bank accounts. Duffle bags and boxes filled with cash were deposited by Mr. Botero into accounts at Miami banks in collusion with three bank officials. The banks filed no CTR reports. At least $38 million of the funds were tranferred from the Miami accounts to other accounts and ultimately to Colombia by wire transfer. The admissible evidence in this case did not tie the $57 million to narcotics activity and therefore was not subject to forfeiture under current law.

After the government completed its investigation, however, it discovered that at least the $38 million wired to Colombia was primarily to pay source suppliers of narcotics (i.e., just to pay for the wholesale cost of the narcotics being shipped to this country). Under H.R. 5176 forfeiture authority, the funds might have been seized prior to their leaving the United States. Moreover, the average mark-up on wholesale narcotics is roughly ten times the wholesale value. In this case, that would mean roughly 380 million narcotics dollars were generated, probably in this country, because under current law the enforcement authorities were unable to seize and forfeit Mr. Botero's $38 million. However, even if law enforcement authorities had been unable to seize the funds before they left the country, Section 4 of the bill would have authorized a civil penalty against the money launderer equal to the amount of the unreported currency.

(3) An individual represented to numerous financial institutions that he was conducting business as a bullion dealer and that he would be depositing large amounts of currency with those institutions. He opened business accounts, using his true name and the name of a bullion-dealer organization. He was not, in fact, a bullion dealer but was a money launderer. The bullion-dealer organization was strictly a shell corporation he used to launder money for his clients.

Over a 12-month period he deposited about $10 million in currency into 40 different accounts with 25 financial institutions in Florida and California. He drew checks on the accounts, payable to nominee names, which were then given to his clients. The check amounts were slightly less than the deposit amounts and the difference represented his money laundering commission.

The individual filed federal tax returns, showing his occupation as a bullion dealer. Gross receipts on the tax returns approximated the amounts of the checks drawn on the accounts. The profit on the returns resulted from the commissions.

Although the banks filed reports on the individual's transactions, the individual would have violated 31 U.S.C. 5313 as amended by Section 2 of H.R. 5176 (as well as 18 U.S.C 1001) because he made a material misstatement of fact, *i.e.,* a false occupation and a false business name, which caused the bank to file a form containing a material misstatement of fact. Current statutes do not allow for seizure of any of the funds deposited in the bank accounts. H.R. 5176 would subject these deposited funds to seizure and forfeiture.

Finally, to underscore the need for a forfeiture provision in the present legislation, the Department of Justice responded to Chairman St Germain's inquiry concerning forfeiture of Currency Transaction Reports as follows:

> Under existing law no forfeiture provision exists. As a consequence, a prospective money launderer, individual, or institution can anticipate minimal jail time in a Federal Correctional Institution, after which the proceeds of his money laundering, safely stored in a foreign Bank Secrecy jurisdiction, will be his to use. Recognition of this penal reality has encouraged an almost cavalier attitude among money launderers.

The Committee is quite concerned with the minimal jail time to which Justice refers. Although the sentencing of criminals is not within our jurisdiction, the Committee urges that the United States Sentencing Commission give this issue top priority. (The Comprehensive Crime Control Act of 1984 created the United States Sentencing Commission. Its purpose is designed to provide some uniformity in sentencing within the Federal Court System).

It should be noted, however, that the Committee's strong forfeiture provision should give drug dealers and money launderers some sobering thoughts concerning their future profits.

THE RECORD OF TREASURY'S PERFORMANCE

In 1981, the Comptroller of the United States submitted a report to the Congress at the request of this Committee's Subcommittee on Oversight, on the effectiveness of the Bank Secrecy Act reporting requirements. This was only one of several reports requested by this Committee in conjunction with numerous oversight hearings this Committee has called since enactment of the Bank Secrecy Act of 1970. In its 1981 report, GAO documented that Treasury had not yet effectively used its enforcement powers to implement the Act's reporting requirements and that Treasury was slow to (1) promote and facilitate use of data related to the Act; (2) strengthen the Act's regulations; and (3) initiate more effective compliance enforcement. GAO also faulted Treasury for not committing adequate resources to implement reporting requirements.

Five years have passed since GAO issued its critical report. As recently as June of this year, GAO submitted a report on Treasury's management of the Bank Secrecy Act and the use of the Act by law enforcement personnel. Despite steps recently taken by Treasury to improve implementation of the Act, GAO found that Treasury *still* lacks specific and current information about the way supporting agencies are carrying out their delegated duties. It said, for example, "Some agencies do not provide any information to Treasury headquarters about their activities and others provide information of limited utility. Because Treasury does not have such information, it cannot determine the number of financial institutions examined or the number of violations identified."

Since the Bank of Boston case, Treasury, to its credit, organized an interagency working group to improve existing examination procedures because current procedures were not adequate to detect violations of the Act. In addition, it formalized the role of the staff already reporting to the Assistant Secretary for Enforcement by establishing the Office of Financial Enforcement under the Assistant Secretary to assist in carrying out the responsibilities of implementing the Act. Although four staff positions are authorized, only two are presently filled. Also, it has delegated more responsibility to the Internal Revenue Service. The Committee commends the Department and especially the current Assistant Secretary for Enforcement and Operations for these actions. However, the Department has yet to establish management controls which would provide more information to Treasury headquarters about the activities of the agencies and bureaus to which Treasury has delegated authority to implement the Act.

The Committee has affirmatively responded to Treasury's legislative requests as many provisions in H.R. 5176 do attest. The Committee intends to keep a very close watch on Treasury's implementation of the proposed legislation. As a starter, the Committee would strongly urge Treasury to promptly adopt the recommendations of GAO in their June 1986 report.

The above criticism is not intended to apply to the dedicated Treasury employees, either present or retired, who year after year waged war against drug trafficking, almost singlehandedly, without the necessary resources or moral support of the Treasury hierarchy. To those individuals, this Committee and the nation are deeply indebted. However, to be successful in combatting drug trafficking, sufficient resources have to be provided. Although Assistant Secretary Francis A. Keating II's immediate predecessor, and others before him, reported to this Committee that additional resources would be employed, the action to date does not meet the rhetoric, in our opinion. If the Department of the Treasury is unable or refuses to employ sufficient resources, the Committee will have no choice but to reconsider its original decision placing overall responsibility for the administration of the Bank Secrecy Act in Treasury.

MONETARY TRANSACTIONS RECORDKEEPING AND REPORTING REQUIREMENTS

Throughout the hearings, the Subcommittee on Financial Institutions repeatedly heard testimony from government witnesses and others on specific areas of the country, and certain cities such as Miami and Los Angeles where drug trafficking and money laundering are, indeed, pervasive. This is not to say that such activities do not occur throughout the United States—unfortunately, they do. However, the record is clear that certain geographic locations because of their natural physical boundaries are obviously more attractive to drug traffickers than other locations. Section 8(a) of H.R. 5176 would give the Secretary of Treasury discretionary authority to order domestic financial institutions individually, or a group of such institutions located in a certain geographical location, as noted, to obtain and retain information, for such a period of time the Secretary may prescribe, involving the transaction of more than $3,000 in cash or such other monetary instruments he or she may describe and if necessary to file reports on such transactions. The Committee is persuaded that such authority is necessary in order to target those geographic areas and those specific financial institutions which may be more prone to be abused by organized crime, especially narcotics trafficking. It is expected that such *targeted* recordkeeping and reporting requirements would be of limited duration and would provide law enforcement authorities with additional tools to combat money laundering operations associated with organized crime and drug trafficking.

In addition, Section 8 requires all domestic financial institutions that sell bank checks, cashier's checks, traveler's checks, or money orders in connection with a transaction involving cash of more than $3,000 to obtain and retain certain information from purchasers of such instruments whose signature is required on a form to be prescribed by the Secretary. Under certain circumstances, a report shall be prepared and filed by the financial institution if the information obtained indicates that the aggregate amount of checks or money orders sold to the purchaser on the business day in which such transaction occurs exceeds $10,000.

These requirements are not intended to be overly burdensome to the administrative operations of financial institutions. Because these institutions should already be keeping records comparable to those required by the bill, that should not pose a hardship nor require duplication of effort. Such recordkeeping simply corresponds to following sound business practices. These recordkeeping and reporting requirements of Section 8 are an attempt to target money launderers, and the full cooperation of the financial community is required. Financial institutions must be ever mindful that money laundering is not just a problem for law enforcement. The Committee also recognizes that financial institutions have become more sensitive to the problem of money laundering, and it appreciates their increased responsiveness to these concerns. For example, many have instituted or improved employee training programs. The Committee urges them to join with the Treasury Department and regulatory agencies in even greater cooperative efforts to combat money laundering.

As one witness put it, "The illicit money circulating through the financial bloodstream of our country is a poison that attacks the health of the financial community itself." In addition, the Committee would point out that the good reputation of financial institutions caught up in the web of laundered funds can be deeply scarred in the eyes of the public—even though its officers or employees are innocemt. The Committee received convincing testimony that law enforcement officials are seeing more cases in which banks are actually the prey of the white collar criminal.

Finally, a solution to the money laundering problem must have the joint cooperation of government and the financial community. Without this commitment, we may very well lose the battle on combatting drug trafficking.

NEED TO ESTABLISH AND MAINTAIN BANK SECRECY ACT COMPLIANCE PROCEDURES

The critical need for improved federal bank regulatory agency supervision over financial institutions in the area of Bank Secrecy Act compliance is further emphasized in Section 5 of the legislation. That section not only requires institutions to establish and maintain procedures to assure compliance with that Act, but also requires the federal banking agencies to review, in each examination, those compliance procedures, and to describe any problems with these procedures in the appropriate examination report. The Committee is cognizant of the different types of examinations conducted by the agencies (*i.e.,* regular, targeted, and others). It is expected that the agencies would use the compliance procedures directed in this section in reasonable accordance with the standards such agencies apply to these different examinations. Section 5 also authorizes the agencies to issue cease and desist orders and to impose civil money penalties of up to $1,000 per day for failing to establish and maintain Bank Secrecy Act compliance procedures.

These requirements are in response to the admitted failure by the bank regulatory agencies to adequately monitor and enforce compliance. Hearings conducted by the Subcommittee on Financial Institutions Supervision, Regulation and Insurance in April of 1985 on the Bank of Boston and on the Shawmut Bank of Boston revealed severe weaknesses in the agencies' oversight of compliance with the Bank Secrecy Act. Mr. C. T. Conover, the Comptroller of the Currency at the time, stated:

> The Comptroller's Office (OCC) shares the public's concerns, and we are committed to ensuring effective discharge of our responsibilities under the Bank Secrecy Act. We have been reviewing the facts to determine what went wrong in those cases that involve national banks and what we should do differently in the future. Obviously, the primary responsibility for complying with the law rests with the banks. *However, we have concluded that there was an institutional failure on the part of OCC management relative to our responsibilities under the Bank Secrecy Act and that a program of corrective actions needs to be undertaken.* (emphasis added)

While it is recognized that broad statutory language exists which would allow the agencies to require each examination to include a review of such compliance procedures, the testimony and the evidence gathered have indicated that adequate attention was not accorded to the Bank Secrecy Act. Indeed, Bank Secrecy Act compliance examination procedures were given a low priority by the agencies, as evidenced by the numerous violations uncovered in the past year and a half. The purpose of this section is to provide the impetus to the regulatory agencies to review the procedures at each examination, and to give them the necessary enforcement tools (civil penalties and cease and desist powers) to compel compliance by statute rather than reliance upon regulatory agency discretion.

In recent years, the Committee has taken other actions to enhance the regulatory authority and power of the federal banking agencies to address specific problems. For instance, in 1978, the Congress passed P.L. 95–630, the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (FIRICA). That law included new restrictions on insider lending by creating statutory limits on the percentage of bank capital that may be lent to executive officers, directors and controlling persons of financial institutions. It also provided the agencies with explicit cease and desist authority against insiders as individuals, and eased the statutory threshold under which the agencies could remove an insider from his position in a financial institution. These changes were made, to a large extent, as a result of several investigations conducted by the Subcommittee on Financial Institutions Supervision, Regulation and Insurance, including the much-publicized insider lending activity involving Bert Lance and the Calhoun National Bank and the National Bank of Georgia; hearings involving the Citizens State Bank of Carrizo Springs, Texas in 1976; and the investigation into the failure of the U.S. National Bank of San Diego in 1973. Indeed, the Committee's report on H.R. 13471, part of the legislative history of P.L. 95–630, stated with respect to the U.S. National Bank of San Diego:

> The investigation also revealed that the Comptroller of the Currency's office had been aware of growing insider abuse since 1962—some 11 years before the bank had to close its doors—but had failed to take definitive action.

Once again, the Committee is addressing the need to improve the authorities of the bank regulatory agencies by increasing their examination responsibilities and by enhancing their power to enforce compliance with the requirements for institutions to establish and maintain procedures involving the Bank Secrecy Act. The recent General Accounting Office Report of June 1986 on the Bank Secrecy Act and on the ways which the Department of the Treasury can improve its implementation, set forth many relevant observations regarding the role of the regulatory agencies. Among other things, the report stated:

> Treasury officials told us that the current examination procedures generally do not detect serious compliance problems and that the examining agencies have not been successful in assuring compliance and detecting noncompliance with these requirements. Treasury has been aware since at least 1980 that examining agencies are not detecting serious violations. Treasury's Assistant Secretary for Enforcement stated during an October 1980 hearing before the House Banking Subcommittee on General Oversight and Renegotiation that "it has become apparent that serious violations at a number of banks have not been detected by the bank examiners." He added that the violations generally came to light as a result of other investigations and analyses.

The Committee recognizes that the bank regulatory agencies have taken a number of steps on their own to facilitate compliance. An interagency working group has been established to modify examination procedures involving the Bank Secrecy Act, and other changes to improve internal procedures, examiner training and industry awareness have taken place since the Subcommittee's hearings on the Bank of Boston. Nevertheless, the requirements imposed by Section 5 of the legislation are designed to further improve this situation by mandating the financial institutions to establish and maintain compliance procedures, and by requiring the regulators to review those procedures at every examination. It is expected that the agencies' examinations will be sufficient to uncover procedure deficiencies in a financial institution's compliance with the Bank Secrecy Act, and that the agency will take the approriate actions to enforce necessary compliance.

CLARIFYING THE "STATE OF MIND" STANDARD FOR CRIMINAL AND CIVIL MONEY PENALTIES

Under present law, the term "willfully" is used in Section 5321(a) and Section 5322 of Title 31, U.S. Code, which prescribes civil penalties and criminal penalties, respectively, under the Bank Secrecy Act. The term "willfully," since it is used in both the civil and the criminal context in present law, has caused some confusion as to its meaning. Section 9(b) of H.R. 5176 clarifies the state of mind standard under existing law in effect for criminal penalties. Section 9(b) substitutes the word "knowingly" in each place where the term "willfully" appears. In the criminal context the term "knowingly" means with specific intent to commit a violation of the Bank Secrecy Act. The term "knowingly" is the general modern standard used for criminal culpability.

Likewise, the substitution of the words "knowingly or with reckless disregard for a provision of this subchapter" for the word "willfully" is intended solely to clarify (and not to lower) the state of mind standard that the Treasury Department has consistently applied in imposing civil penalties under the Act. The Committee would note that this section was adopted by the Full Committee as a conforming amendment to the bill, H.R. 5077, as reported out by the Judiciary's Subcommittee on Crime. The Banking Committee acknowledges the expertise of the Judiciary Committee in defining criminal law terminology.

RIGHT TO FINANCIAL PRIVACY AMENDMENTS

The excellent report of the Privacy Protection Study Commission in 1977 opens by quoting Justice William O. Douglas as follows: "The banking transactions of an individual give a fairly accurate account of his religion, ideology, opinion, and interest . . . ." The report also noted that "Americans have long thought that the details of an individual's financial affairs are nobody's business but his own unless he chooses to reveal them."

In contrast, the Supreme Court in *United States* v. *Miller* 425 U.S. 435 (1976), held that a customer of a financial institution has no constitutional standing to contest government access to his transactions because they are the institution's records and not the individual's. The Committee responded directly and almost immediately by providing a qualified statutory right to financial privacy under Title XI (the Right to Financial Privacy Act) of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, P.L. 95-630.

As the 1978 Committee Report stated, the Right to Financial Privacy Act (RFPA) "is intended to protect the customer of financial institutions from unwarranted intrusion into their records while at the same time permitting legitimate law enforcement activity." Under the Act, customers, in most instances, must be notified that a demand for his or her records has been made and afforded an opportunity to challenge such access in a court of law. There are, however, several important exceptions to the notice and challenge requirements, not the least of which is the exception for a grand jury subpoena. The Right to Financial Privacy Act seeks to strike a balance between the privacy rights of bank customers and the need of law enforcement agencies to obtain financial records in legitimate investigations. The Committee, in its deliberations on H.R. 5176 has continued to strike that balance. Section 10(a) clarifies the type of information a financial institution (or its officers and employees) may voluntarily give to law enforcement officials under 12 U.S.C. 3403(c). Specifically, H.R. 5176 would permit an institution to provide to such officials the names, addresses, account numbers, the nature of and a description of the possible violation. No information provided under this subsection may include the financial records of a customer. Section 10(a) clarifies existing law by expressly defining the extent or type of information includable in a notification to proper law enforcement authorities, and responds to doubt and misgivings raised by financial institutions and their bank counsel on this matter. It also preempts state or local law which would otherwise prohibit disclosure.

Section 10(b) exempts financial institutions from the notification requirements to insiders of financial institutions under RFPA. It permits a financial institution or a supervisory agency to provide to federal or state law enforcement agencies the financial records of any officer, director, employee, or controlling shareholder of such institution whenever there is reason to believe that such records are relevant to possible criminal activity against financial institutions.

RFPA was never meant to protect those insiders who violate their position of trust and who may also have an account at the institution in which they serve. This Committee will not tolerate such conduct. The Committee has had a long history of examining insider abuses for a number of years, going back to FIRICA and before. Under existing law, the individual under investigation often has access to vital bank records and can alter, destroy, or conceal them if notified that some information has been transferred to a law enforcement agency, usually by way of a criminal referral. The House Government Operations Committee concurs in this finding and has recommended adoption of this provision.

SUMMONS AUTHORITY FOR THE DEPARTMENT OF THE TREASURY

Section 11 of H.R. 5176 gives the Department of the Treasury summons authority to obtain records and testimony relating to Bank Secrecy Act compliance by financial institutions. The summons authority is limited to examination of financial institution records and testimony of financial institution employees for the purpose of investigating civil violations of the Bank Secrecy Act.

In its testimony before the Subcommittee, the Department of the Treasury stated that such authority is needed especially with respect to the 3,000 miscellaneous nonbank financial institutions such as casinos, foreign currency brokers, and others for which examination responsibility has been delegated to the Internal Revenue Service. IRS now depends on the voluntary cooperation of these institutions in the examination process and has no means to compel cooperation.

In addition, Treasury would use the summons authority if the bank was being noncooperative in a civil penalty case, or it could be used to follow up on information regarding noncompliance developed in a bank examination.

EXEMPTIONS FROM THE REPORTING REQUIREMENTS UNDER THE BANK SECRECY ACT

In an effort to cut down on unnecessary reports, the Bank Secrecy Act allows institutions to exempt retail enterprises that deal directly with consumers and normally generate large volumes of cash, such as grocery stores. When the 1980 Treasury regulations were promulgated it was the clear intention that the granting of exemptions was to be narrow, limited to those firms that had clear and legitimate reasons for generating cash through retail operations. Misused, the exempt list obviously could defeat the purpose of the Bank Secrecy Act. In its investigation of the Bank of Boston case, the Subcommittee discovered that the Bank had placed firms controlled by reputed organized crime figures on its exempt list, which resulted in shielding much of their operations from law enforcement agencies. Negligence in connection with the exempt list by other institutions was also discovered by the Subcommittee.

Section 12 of the bill amends the exemption requirements in two instances: (1) it requires the Secretary of the Treasury to review outstanding exemptions granted by a financial institution whenever there is a change in management or control in such financial institutions; and (2) it requires the financial institutions not only to maintain an exempt list but requires the institution to describe in detail why a person (includes corporations and other entities) is qualified for such exemption, requires the signature of the person getting the exemption, and requires the financial institution to certify to the Secretary that the person meets the qualification requirements.

CHANGE IN BANK CONTROL AMENDMENTS

The Change in Bank Control Act and the Change in Savings and Loan Control Act, reported out of this Committee and passed as Titles VI and VII of the Financial Instutitions Regulatory and Interest Rate Control Act of 1978, authorize banking agencies to disapprove changes of control of financial institutions within their jurisdictions. Its purpose is to prevent dishonest persons, especially those with a prior history of insider abuse or those who may have a criminal background, from gaining control of financial institutions.

In 1978 the Committee reported that one of the most glaring gaps in the regulatory structure was the lack of control over transfers of ownership of banks and savings and loans between individuals or groups of individuals. It was pointed out that when a depository institution is chartered, when it applies for insurance, when it plans to merge, or when it becomes part of a holding company, an application has to be filed with and approval obtained from the appropriate regulatory authority. However, prior to the 1978 Act, banking regulators had no approval authority over a transaction to buy a bank or savings and loan when an individual or a group of individuals were the acquirors.

The statutory changes in 1978 were adopted as a result of ample evidence developed by the Subcommittee on Financial Institutions that supervision was needed following several failures of Texas banks which were symptomatic of a region-wide problem. The Subcommittee's invgstigation found that banks "were bought and sold like used cars and the regulators considered themselves powerless to do anything about what became known as the 'Texas Rent-A-Bank Scheme.'"

In 1984 the House Committee on Government Operations issued a report titled "Federal Response to Criminal Misconduct and Insider Abuse in the Nation's Financial Institutions." That report, the product of the Government Operations Subcommittee on Commerce, Consumer, and Monetary Affairs was highly critical of the regulatory agencies' handling of Charge of Bank Control applications. That Subcommittee found that the "banking agencies generally fail to investigate or verify information furnished by applicants under the Change in Bank Control Act or the Change in Savings and Loan Control Act. Consequently, persons lacking in integrity, experience, and financial ability—and even persons with criminal records—have acquired control of financial institutions. The report further stated that the agencies rarely disapprove applications unless an applicant is a convicted felon—even if other adverse information is uncovered. This absence of proper scrutiny by the banking agencies is evidenced, according to the Report, by the agencies' rejection of only 33 Change of Control applications out of 2,211 filed between 1980 and 1984.

This Committee is deeply disturbed by the Government Operations Committee's findings. Our concern is directed not only at those instances where incompetence may affect the safety and soundness of an institution, but we are deeply troubled by the possibility that organized crime and drug traffickers may acquire a financial institution and use it for unlimited money laundering operations. This concern is not without foundation. In his testimony before the Subcommittee on Financial Institutions on April 16, 1986, Mr. Richard C. Wassenaar, Assistant Commissioner (Criminal Division) IRS, stated:

> We have some concern that professional money launderers or narcotics traffickers may attempt to gain financial control of financial institutions to facilitate their money laundering activities. The Drug Enforcement Administration was successful in recent prosecutions of a drug ring in which the leader, Jose Antonio Fernandez, owned a controlling interest in the Sunshine State Bank in Miami, Florida.

He added that additional investigations dealing with drug traffickers and other criminals attempting to take over financial institutions were ongoing.

In response to the above findings, the Committee has amended the Change in Bank Control and Savings and Loan Control Acts to: (1) extend the period the regulators have for disapproval; (2) require the regulators to conduct thorough investigations; (3) make change of control notices public; (4) clarifying the existing ambiguity regarding the issuance of subpoenas, and to seek injunctions or other judicial relief (including divestiture) in a United States district court; and (5) require regulators to review compliance with the Bank Secrecy reporting requirements. The litigating authority granted to federal banking agencies under Section 17 of the bill is limited only to suits for injunctions or other judicial relief and only as they apply to Change in Bank Control and Savings and Loan Control Acts.

The powers granted to the regulators under this bill are extensive and are in response to this Committee's determination to keep the drug dealers, mobsters, and other criminal elements within our society from taking over financial institutions. We expect this determination to be matched by forceful action on the part of the banking regulators.

INTERNATIONAL INFORMATION EXCHANGE SYSTEM

Section 18 of the bill requires the Secretary of the Treasury, in consultation with the Federal Reserve Board, to initiate discussions with central bank or other appropriate government officials of other countries in order to find ways to eliminate the international flow of money derived from drug trafficking and other criminal operations.

The Committee strongly urges the Federal Reserve to use its membership on the Basle Committee to encourage these efforts. Although an advisory committee, having no power to require implementation of its agreements in the laws or regulations of member nations, it nevertheless has been the main forum for international coordination of bank supervision since its beginning in 1974. The Committee is encouraged (1) by Chairman Paul A. Volcker's statement on July 29, 1986, before the Committee, in which he agreed to review the matter and (2) by Governor Martha R. Seger's testimony before the Subcommittee on May 14, 1986 that such discussions would commence when the Basle Supervisory Committee met in June.

The Committee notes that in addition to the Federal Reserve, the United States is represented in the Basle Committee by the Office of the Comptroller and the Federal Deposit Insurance Corporation. In that regard, the Committee's remarks pertaining to the Federal Reserve's participation would apply equally as well to the other two banking regulators.

Throughout this report, the Committee has expressed its concern about the international flow of illicit narcotics from foreign countries to the United States. Our hearings on money laundering have shown that in recent years the use of offshore banks and other financial institutions for both legal and illegal purposes (such as tax evasion and money laundering) has increased substantially. Of the $50–70 billion the President's Commission on Crime estimates that is earned annually by drug trafficking $5–15 billion of that sum is attributed to offshore operations from countries that have so-called bank secrecy laws.

Section 6(a) of the Committee's bill extends the definition of financial institutions subject to the requirements of the Bank Secrecy Act to "any foreign subsidiary or affiliate, as defined by the Secretary of the Treasury, of any entity described . . ." under 31 U.S.C. 5312(a)(2). The Committee acknowledges the extraterritorial reach of this provision and is aware that under certain circumstances, it may be difficult for law enforcement authorities to enforce. In that regard, the Committee would note that the application of any relevant provision of the Bank Secrecy Act of this category of institutions is discretionary with the Secretary of the Treasury who would impose such requirements by regulation. However, currently, under the Bank Secrecy Act and Treasury regulations, foreign banks and branches doing business in the United States are considered domestic financial institutions subject to all reporting and recordkeeping requirements of the Act. This provision in no way diminishes the duties of these foreign-owned banks doing business in the United States. By including Section 6(a) in the bill, the Committee's intent is to send a clear and unmistakable message that it expects United States financial institutions and foreign financial institutions doing business in this country to not only abide by the letter of the law but to live up to their moral responsibility to fully cooperate in this country's efforts to stamp out the illicit trafficking of drugs.

The Congress has for many years enacted legislation designed to eliminate the influx of illegal drugs and to provide moral suasion to those foreign countries which harbor this activity. For example, in 1972, Congress adopted the Rangel Amendment to the multilateral development bank legislation, which required the U.S. executive directors of those institutions to vote against loans to drug trafficking countries.[3] The amendment, unfortunately, has not been enforced by the executive branch of the government.

Moreover, as a general principle, an obligation to use all good faith efforts to obtain permission from a foreign sovereign to comply with a United States law in the foreign country, where such compliance would violate the law of that foreign sovereign, is well settled.[4]

Absent treaties, or other bilateral agreements, it is extremely difficult for law enforcement agencies to obtain records from financial institutions located in bank secrecy jurisdictions. However, the Committee encourages aggressive litigation as was exemplified by the Department of Justice in *United States* v. *Bank of Nova Scotia.*[5] In that case, the U.S. Circuit Court of Appeals for the 11th District upheld the government's enforcement of a subpoena in a tax and narcotics investigation on a United States branch of a bank whose sister branch in a secrecy haven possessed protected information. The Committee, however, urges our government to continue to do all it can to negotiate mutual legal assistance treaties in financial secrecy jurisdictions, especially as they relate to drug trafficking, and notes with approval the efforts made recently by the United States with the Cayman Islands.

Willingly or unwillingly, banks, both in the United States and the haven country, are essential components in the entire offshore money laundering scheme. Banks have what the money launderer needs to be successful. They have the physical facilities to accept large amounts of cash, issue checks, make loans, and receive or send funds by wire. The role of banks in offshore money laundering is critical to this criminal. If this country and indeed other countries are serious about eliminating the international flow of drug trafficking (whose gross profits worldwide have been estimated to be over $110 billion per year) they will have to have, in addition to mutual legal assistance treaties, or other bilateral agreements, the full cooperation of the international banking community and a dedicated effort by their central banks.

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[3] 22 U.S.C. 285p. Sec. 19 was added by Public Law 92–245. Congressman Charles B. Rangel, Chairman of the Select Committee on Narcotics Abuse and Control.

[4] *Societe Internationale Pour Participations Industrielles et Commerciales, S.A.* v. *Rogers,* 357 U.S. 197 (1958); *CAB* v. *Deutsche Lufthansa Aktiengesellschaft,* 591 F.2d (D.C. Cir. 1979); Application of Chase Manhattan Bank, 192 F. Supp. 817 (S.D.N.Y. 1961).

[5] 740 F.2d 817 (11th Cir. 1984).

As noted throughout the Committee Report, the Banking Committee and the Congress have attempted, over the years, to enact legislation designed to eliminate the influx of illegal drugs from foreign countries.

The Committee intends to follow the development of international exchanges very closely, especially as they relate to stopping international drug trafficking. In that regard, the Committee intends to conduct extensive oversight hearings in this area and would expect the Federal Reserve and the Departments of State, Justice and Treasury to convey to officials in foreign countries the Committee's determination to live up to its responsibilities, as is evidenced by its reporting out H.R. 5176.

STATEMENTS MADE IN ACCORDANCE WITH HOUSE RULES

In accordance with clauses 2(l)(2)(B), 2(l)(3), and 2(l)(4) of rule XI of the Rules of the House of Representatives, the following statements are made.

COMMITTEE VOTE (RULE XI, CLAUSE 2(l)(2)(B))

The Full Banking Committee, with a quorum present, ordered H.R. 5176, as amended, favorably reported by a recorded vote of 47–0 at its markup on July 22, 1986.

OVERSIGHT FINDIGS AND RECOMMENDATIONS (RULE XI, CLAUSES 2(l)(3) (A), AND (D), AND RULE X, CLAUSES 2(b) (1) AND (2) AND 4(c)(2))

The Subcommittee held four days of hearings on the need to enact legislation to prevent the laundering of money through financial institutions for illegal purposes. The Subcommittee heard from 15 witnesses and received statements from additional groups. Based upon the testimony at the hearings, the Committee finds there is a need for federal legislation to prevent the laundering of money through financial institutions. Therefore, the Committee finds that this legislation is necessary and recommends that the House pass H.R. 5176, as amended and favorably reported by the Banking Committee.

In the 98th Congress, the Committee on Government Operations issued a report of that Committee entitled "Federal Response to Criminal Misconduct and Insider Abuse in the Nation's Financial Institutions." Among other things, this report recommended action on legislation to amend the Right to Financial Privacy Act of 1978, the Change in Bank Control Act, and the Change in Savings and Loan Control Act. The Committee on Banking, Finance and Urban Affairs believes that in ordering reported H.R. 5176, as amended, it has taken significant action that is consistent with the thrust of these recommendations from the Committee on Government Operations. No report from that Committee has been received in the 99th Congress.

INFLATION IMPACT STATEMENT (RULE XI, CLAUSE 2(l)(4))

The Committee estimates that this bill will not have any impact on any inflationary trends in the national economy.

COST ESTIMATE OF THE CONGRESSIONAL BUDGET OFFICE PURSUANT TO SECTION 403 OF THE CONGRESSIONAL BUDGET ACT OF 1974 (RULE XI, CLAUSE 2(l)(3)(C))

The Committee has received the following report from the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 5, 1986.

Hon. FERNAND J. ST GERMAIN,
Chairman, Committee on Banking, Finance, and Urban Affairs, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 5176, the Comprehensive Money Laundering Prevention Act, as ordered reported by the House Committee on Banking, Finance, and Urban Affairs, July 22, 1986. We estimate that this bill will have no significant impact on the federal budget.

The bill would make it a crime to structure cash transactions to avoid reporting requirements or to prevent financial institutions from completely fulfilling reporting requirements. The bill authorizes a civil penalty against a person, and the seizure and forfeiture of cash or property of a person who commits such a crime. H.R. 5176 would also require financial institutions, as directed by the Secretary of the Treasury, to record certain information for cash transactions greater than $3,000, and would require federal banking regulatory agencies to review financial institutions' compliance with reporting requirements.

The Secretary of the Treasury would be responsible for implementing many of the bill's requirements, if it were enacted. Based on information from the Internal Revenue Service and the Office of the Secretary, we do not expect that significant additional resources would be necessary to apply the penalty, seizure, and forfeiture provisions against those who do not comply with H.R. 5176. Although we do not have sufficient information to estimate the additional revenues that would result from penalties and seizures, such revenues probably would exceed the costs of levying and collecting them. The additional requirements placed on the regulatory agencies would have no net effect on the federal budget over time because those agencies would recover their costs through fees, or would reallocate resources from other activities to those required by the bill. Other provisions of the bill are not expected to result in significant additional costs.

Enactment of this bill would not affect the budgets of state or local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

EXCHANGE OF LETTERS BETWEEN THE CHAIRMAN OF THE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS AND THE CHAIRMAN OF THE COMMITTEE ON WAYS AND MEANS

COMMITTEE ON WAYS AND MEANS,
HOUSE OF REPRESENTATIVES,
Washington, DC, July 22, 1986.

Hon. FERNAND J. ST GERMAIN,
Chairman, Committee on Banking, Finance and Urban Affairs,
Washington, DC.

DEAR MR. CHAIRMAN: I write to express jurisdictional concerns that I have with regard to H.R. 5176, the Money Laundering Control Act of 1986. It has come to my attention that this bill was reported by the Subcommittee on Financial Institutions Supervision, Regulation and Insurance, on July 17, 1986, and ordered favorably reported by the Committee on Banking, Finance and Urban Affairs on July 22, 1986. As introduced and as amended by your Committee, this bill includes provisions clearly within the jurisdiction of the Committee on Ways and Means.

H.R. 5176 contains provisions which amend title 26 to expand the scope of the seizure and forfeiture authority of the Internal Revenue Service. Specifically, the bill expands the IRS's authority to provide for the seizure and forfeiture of coins, currency, and other monetary instruments (and interests in property traceable to such instruments) seized pursuant to section 5317 of title 31, United States Code. Related technical and conforming amendments are included.

It is my understanding that your Committee would like to move directly to the suspension calendar on July 23, 1986, or shortly thereafter. While I have been given assurances by the Parliamentarian that under normal circumstances this legislation would be referred to the Committee on Ways and Means for consideration of those areas within its jurisdiction, I agree that this legislation is urgently needed. Since I have been advised that the provisions within the Committee on Ways and Means' jurisdiction have been revised to reflect concerns of the Committee on Ways and Means, I will refrain from requesting a sequential referral. However, if the Committee on Ways and Means refrains from requesting a sequential referral in the interest of assisting the Committee on Banking, Finance and Urban Affairs expedite House consideration of H.R. 5176, I request that you, as Chairman of the Committee on Banking, Finance and Urban Affairs, acknowledge the jurisdiction of this Committee. Also, I request that you agree that the deferral of a sequential referral request by the Committee on Ways and Means under these circumstances would not be viewed as precedential by the Committee on Banking, Finance and Urban Affairs, particularly in the event efforts are made to extend or enlarge this provision again or to initiate any similar provision in the future. Furthermore, I request that this letter and your anticipated response be included in the report of the Committee on Banking, Finance and Urban Affairs regarding H.R. 5176. In addition, I would appreciate your agreement to acknowledge the jurisdictional interests of the Committee on Ways and Means in a colloquy during House floor debate on the bill.

Thank you for your consideration of this important matter.
Sincerely,

DAN ROSTENKOWSKI, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
Washington, DC, July 23, 1986.

Hon. DAN ROSTENKOWSKI,
Chairman, Committee on Ways and Means,
Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter of July 22, 1986.

I recognize fully that H.R. 5176 as reported by the Committee which I chair does include provisions clearly within the jurisdiction of Ways and Means.

I agree with you that the deferral of a sequential referral request by the Committee on Ways and Means under these circumstances would not be viewed as precedential by the Committee on Banking, Finance and Urban Affairs, particularly in the event efforts are made to extend or enlarge this provision again or to initiate any similar provision in the future.

Please be assured that the content of this correspondence will be made part of the permanent record in whatever appropriate way, including, of course, colloquy on the floor of the House when the bill is being considered if that is your desire.

I appreciate your consideration of this important matter.
Sincerely,

FERNAND J. ST GERMAIN, *Chairman.*

SECTION-BY-SECTION SUMMARY OF THE COMPREHENSIVE MONEY LAUNDERING PREVENTION ACT AS AMENDED AND AS ADOPTED BY THE HOUSE BANKING COMMITTEE, JULY 22, 1986

SECTION 1. SHORT TITLE

The short title of this Act is the Comprehensive Money Laundering Prevention Act.

SECTION 2. STRUCTURING TRANSACTIONS TO EVADE REPORTING REQUIREMENTS PROHIBITED

Adds a new section 5324 to Title 31 of the U.S. Code to expressly subject to potential criminal and civil liability a person who causes or attempts to cause a financial institution to fail to file a required report or who causes a financial institution to file a required report that contains material omissions or misstatements of fact. Creates the offense of structuring a transaction to evade reporting requirements, regardless of whether an individual transaction must be reported under the Bank Secrecy Act.

SECTION 3. SEIZURE AND CIVIL FORFEITURE OF MONETARY INSTRUMENTS

Section 3(a). Amends Section 5317 (c) of Title 31 (relating to reports required to be filed for monetary instruments) to provide express authority to seize assets clearly traceable to a monetary instrument being transported or which has been transported in violation of section 5316.

Section 3(b). Authorizes the seizures and forfeiture of cash or property related to such cash of any person who causes a financial institution to fail to file a currency transaction report (CTR), causes such institution to file a report that contains a material omission or misstatement of fact, or structures a transaction for the purpose of evading the reporting requirements of section 5313 (a) of Title 31 of the U.S. Code.

The seizure and forfeiture provisions would, for example, reach monies deposited in bank accounts or other types of financial accounts, e.g., checking accounts, money market accounts, certificates of deposit, and would apply to real and personal property that had been purchased by a violator with a monetary instrument that gave rise to a section 5324 violation. This provision would not apply to the property interests of innocent third parties.

A financial institution would be required to hold for 15 days the currency or such other property as the Secretary of the Treaury may prescribe following the Secretary's notification of intent to seize such proceeds.

The affected property would be turned over to the Secretary at any time that a court order is issued. An order may be issued where there is a showing of probable cause that such property is subject to forfeiture.

An exemption from liability for seizure of such property is given to the financial institution involved, to any of its officers, directors, or employees, and to the United States or any of its employees. However, a financial institution may be liable to the U.S. for failing or refusing to hold such property pursuant to the provisions of this section.

Conforms forfeiture provisions under Title 31 with Title 26 (Internal Revenue Code). Current law limits IRS agents' seizure authority to "property subject to forfeiture under the internal revenue laws." This section authorizes IRS officers to seize property subject to forfeiture under Title 31.

SECTION 4. CIVIL MONEY PENALTY FOR STRUCTURED TRANSACTION VIOLATION

Authorizes a civil penalty against a person structuring transactions to evade the reporting requirements of, or causing a financial institution not to file, reports required under Title 31. Such penalty may not exceed the amount of currency or other monetary instrument involved in the transaction.

SECTION 5. DEPOSITORY INSTITUTION SUPERVISORY AGENCY REGULATION OR RECORDKEEPING SYSTEMS

Amends the Federal Deposit Insurance Act, the Home Owners Loan Act of 1933, the National Housing Act, and the Federal Credit Union Act, by directing each appropriate Federal banking agency to prescribe regulations requiring insured financial institutions to establish and maintain Bank Secrecy Act reporting compliance procedures;

Directs the regulatory agencies to include a review of the procedures for each examination as part of the agencies' bank examinations;

Authorizes the agencies to issue cease and desist orders for any violation of this section; and,

Authorizes the banking regulators to impose a civil money penalty (currently $1,000 per day for each day during which such violation continues) for failure to maintain compliance procedures.

SECTION 6. FINANCIAL INSTITUTIONS AND MONETARY INSTRUMENTS

Section 6(a). Amends definition of "financial institution" to include any foreign subsidiary or affiliate of a United States financial institution.

Section 6(b). Amends the definition of "monetary instruments" to include any transfer of funds as the Secretary may prescribe by regulation.

Section 6(c). Includes the Postal Service as a United States Agency under Section 5312 of Title 31. By this action the Committee strongly urges the Secretary of the Treasury to issue appropriate regulations to implement this provision.

SECTION 7. ADDITIONAL REVIEW TIME UNDER THE CHANGE IN BANK CONTROL ACT AND CHANGE IN SAVINGS AND LOAN CONTROL ACT

Clarifies current statutory language concerning time periods for agency review of change in control notices. Authorizes one discretionary 30-day extension of time after the initial 60-day review period. At the expiration of that 90-day period (the 60-day initial period plus the 30-day discretionary extension) the agency could further extend the review period for a maximum of two successive 45-day periods but only for cause, if one of four situations exists, as enumerated as follows:

(1) The agency determines that the acquiring party has not furnished all information required; (2) the information submitted is substantially inaccurate; (3) the agency has been unable to complete the investigation because of delay caused by the acquiring party; or (4) the agency determines that additional time is needed to determine that the acquiring party has not failed to comply with the recordkeeping and reporting requirements of the Bank Secrecy Act.

SECTION 8. MONETARY TRANSACTION RECORDKEEPING AND REPORTING AMENDMENTS

Authorizes the Secretary of Treasury to order domestic financial institutions individually, or a group of institutions (e.g., institutions located in a certain geographic location) to obtain such information as the Secretary may describe concerning any transaction of more than $3,000 involving the payment, receipt, or transfer of cash or such other monetary instruments as the Secretary may describe, to maintain records of such information for such period of time as the Secretary may require, and to file such reports as the Secretary may require.

Directs financial institutions to obtain and retain a report from purchasers of cashier's checks, bank checks, money orders or traveler's checks involving a transaction in currency of more than $3,000. Such report, to be prescribed by the Secretary of the Treasury, must be signed by the purchaser who must certify whether similar cash transactions have been made on the same day with the same or with any other financial institution. Where the aggregate value of all such purchases exceeds $10,000, the financial institution preparing such report shall treat the purchases as a single currency transaction which must be reported by the institution under Section 5313(a) of Title 31.

SECTION 9. CLARIFICATION OF "STATE OF MIND" STANDARD IN EFFECT FOR CIVIL MONEY AND CRIMINAL PENALTIES

Clarifies the "state of mind" standard under existing law in effect for criminal and civil money penalties for violation of the Bank Secrecy Act reporting requirements. Section 9(a) would amend Section 5321(a) of Title 31, United States Code, to substitute the words "knowingly or with reckless disregard for a provision of this subchapter" for the word "willfully" as the state of mind required for imposition of a civil money penalty under the Bank Secrecy Act. As the catchline for this section indicates, this substitution is intended solely to clarify (and not to lower) the state-of-mind standard that the Treasury Department has consistently applied in imposing civil penalties under the Act.

Section 9(b) would amend subsections (a) and (b) of Section 5322 of Title 31, United States Code, to substitute the word "knowingly" for "willfully" under the criminal penalties section. The word "knowingly" is the general modern standard used to determine criminal culpability. As used herein, it means with specific intent to commit a crime.

SECTION 10. AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT

Section 10(a). Clarifies the type of information a financial institution may voluntarily provide to law enforcement authorities under the Right to Financial Privacy Act of 1978, without giving notice to a customer, when the institution suspects such customer may have committed a crime. Preempts any state or local law which would otherwise prohibit disclosure under this section.

Section 10(b). Exempts the requirement to notify insiders of financial institutions under the Right to Financial Privacy Act of 1978 and permits a financial institution or a supervisory agency to provide to federal or state law enforcement agencies the financial records of any officer, director, employee, or controlling shareholder of such institution whenever there is reason to believe that such records are relevant to possible criminal activity against financial institutions by such individuals. Also would permit a financial institution or supervisory agency to provide such records to the Secretary of the Treasury in case of a possible violation of the Bank Secrecy Act. Under existing law, the individual under investigation often has access to vital bank records and can alter, destroy, or conceal them if notified that some information has been transferred to a law enforcement agency.

SECTION 11. COMPLIANCE AUTHORITY FOR SECRETARY OF THE TREASURY AND RELATED MATTERS

Amends 31 U.S.C. 5318 to give the Secretary of Treasury administrative summons authority under the Bank Secrecy Act for both testimonial and documentary evidence. Under subsection (a)(4) of Section 5318, as amended, the Secretary of the Treasury would have the authority to summon a financial institution, a present or former officer or employee thereof, or any person having possession, custody, or care of records and reports required under the Bank Secrecy Act, for the production of information or the provision of testimony before the Secretary or his delegate. This summons authority would include authority to effectuate the provisions of Section 5318(a)(3) and (a)(4) (e.g., to designate those officials who may administer oaths and affirmations, receive evidence, and examine witnesses pursuant to the summons).

Subsection (a)(4) specifically provides that the summons may direct the production of "such books, papers, or other data," and the provision of testimony under oath, "as may be relevant or material to an investigation described in subsection (b)."

Subsection (e) establishes the procedure by which the Treasury Department may invoke the aid of the Federal courts for civil enforcement of its summonses under the Bank Secrecy Act. If a person who has been issued a summons is contumacious or refuses to obey that summons, subsection (e) provides that "the Secretary of the Treasury shall refer the matter to the Attorney General," and that "(t)he Attorney General may invoke the aid" of a Federal court "to compel compliance with the summons."

SECTION 12. AMENDMENTS RELATING TO EXEMPTIONS GRANTED FOR MONETARY TRANSACTION REPORTING REQUIREMENTS

Amends Section 31 U.S.C. 5318 regarding exemptions to filing currency transaction reports which would require the Secretary of the Treasury to review all exemptions of a financial institution not later than 30 days after there has been a change in management or control of such institution.

Requires a person or entity for which an exemption is being considered by a financial institution to provide a detailed description of the reason for such exemption on an exemption application which must be signed by such person getting the exemption. Requires the financial institution to certify to the Secretary that such person is qualified for an exemption.

SECTION 13. PENALTIES FOR FAILURE TO COMPLY WITH CERTAIN RECORDKEEPING REQUIREMENTS

Amends 12 U.S.C. 1829(b) section 21 of the Federal Deposit Insurance Act to provide civil and criminal penalties for violations of the recordkeeping requirements of that Act by insured banks. The penalty amounts parallel and penalties for other Bank Secrecy Act violations under 31 U.S.C. 5321 (civil penalties) and 5322 (criminal penalties). All the provisions regarding assessment, collection, and mitigation of civil penalties in 31 U.S.C. 5321(b) and (c) would apply to civil penalties for recordkeeping violations under 12 U.S.C. 1829b(b)(2).

SECTION 14. EXTENSION OF TIME LIMITATIONS FOR ASSESSMENT OF CIVIL PENALTY

Establishes a new time limit for assessment of civil penalties and a new statute of limitations for actions to enforce civil penalties under the Bank Secrecy Act. Penalties may be assessed up to 6 years (current law is 5 years) after the date of the transaction on which the penalty is based. In addition, Treasury would have 2 years from the date of assessment to bring a collective action or 2 years from the conclusion of a related criminal case under section 5322, whichever is longer.

SECTION 15. DUTY TO INVESTIGATE APPLICANTS FOR CHANGE IN CONTROL APPROVAL

Amends the Change in Bank Control Act and the Change in Savings and Loan Control Act to require the banking regulatory agencies to conduct investigations of persons proposing to acquire control of financial institutions. The agencies would also have to verify the accuracy and completeness of the information contained in the notices, at least to the extent that such information is relevant to a determination of a person's competence, experience, integrity and financial ability. In making this verification, it is expected that the agencies would be guided by a "reasonableness" standard. Further, the agencies would be required to prepare a written report of its investigation and maintain that report as a record of the agency.

SECTION 16. PUBLIC COMMENT ON CHANGE OF CONTROL NOTICES

Amends the Change in Bank Control Act and the Change in Savings and Loan Control Act to require the Federal banking agencies to publish the name of the institution to be acquired and the identity of the proposed acquiror within a reasonable period of time after receipt of the notice of change in control. The agencies are to solicit public comment, particularly from the geographic area where the institution is located. The publication must occur within a "reasonable" time after receipt of the notice to ensure that sufficient time is allowed for meaningful public comment before expiration of the notice review period. A specific exception to the publications requirement is created for situations in which the safety and soundness of the institution is threatened. That exception is considered broad enough to encompass emergency acquisitions or infusions of capital.

SECTION 17. INVESTIGATIONS AND ENFORCEMENT UNDER THE CHANGE IN CONTROL ACTS

Clarifies existing law permitting Federal banking agencies to conduct investigations under the Change in Bank Control Act and the Change in Savings and Loan Control Act and authorizes the agencies to seek injunctive or other equitable relief under these Acts in the appropriate U.S. district court to address violations. This section would grant independent litigating authority limited to actions under the Change in Bank Control Act and Change in Savings and Loan Control Act to each of the Federal banking agencies so that suits for injunctions or other equitable relief could be quickly instituted under this section without referring to the Attorney General.

SECTION 18. DISCUSSIONS TO DEVELOP INTERNATIONAL INFORMATION EXCHANGE SYSTEM TO ELIMINATE MONEY LAUNDERING

Requires the Secretary of the Treasury, in consultation with the Federal Reserve Board, to initiate discussions with central bank or other appropriate government officials of other countries, in order that an information exchange system be established to assist participating countries in their efforts to eliminate the international flow of money derived from illicit drug operations and other criminal activities. The Secretary shall report to the House Banking Committee and the Senate Banking Committee no later than nine months from date of enactment.

SECTION 19. INCREASE IN MAXIMUM CRIMINAL FINE FOR CERTAIN OFFENSES

Increases the maximum criminal fine for Bank Secrecy Act violations from $500,000 to $1 million for individuals and not more than $5 million in other cases.

SECTION 20. REGULATIONS RELATING TO CUMULATION OF OFFENSES FOR FAILURE TO REPORT EXPORT OR IMPORT OF MONEY

Permits the Secretary of the Treasury to prescribe regulations to define the term "at one time" relating to reporting requirements on exporting and importing monetary instruments under 31 U.S.C. 5316. It is intended to permit the cumulation of closely related events in order that such events may collectively be considered to occur at one time for the purposes of the reporting requirements.

SECTION 21. EFFECTIVE DATES

Sections 2, 3, 4, 8 and regulations under Section 5 become effective 3 months from date of enactment.

Sections 7, 9, 13, 14, 15, 16 and 17 become effective after the date of enactment of this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 31, UNITED STATES CODE

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Subtitle IV—Money

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CHAPTER 53—MONETARY TRANSACTIONS

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Subchapter II—Records and Reports on Monetary Instruments Transactions

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5311. Declaration of purpose.

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5324. Structuring transactions to evade reporting requirement prohibited.
5325. Records of certain domestic coin and currency transactions.
5326. Information requirements.

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Subchapter II—Records and Reports on Monetary Instruments Transactions

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§ 5312. Definitions and application

(a) In this subchapter—

(1) * * *

(2) "financial institution" means—

(A) * * *

(T) any foreign subsidiary or affiliate, as defined by the Secretary of the Treasury, of any entity described in this paragraph;

[T] *(U)* an agency of the United States Government or of a Stte or local government carrying out a duty or power of a business described in the clause (2), *including the United States Postal Service;* or

[U] *(V)* another business or agency carrying out a similar, related, or substitute duty or power the Secretary of the Treasury prescribes.

(3) "monetary instruments" means—

(A) United States coins and currency; **[**and**]**

(B) as the Secretary may prescribe by regulation, coins and currency of a foreign country, travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery, and similar material**[**.**]***; and*

(C) as the Secretary may prescribe by regulation, any transfer of funds.

* * * * * * *

§ 5316. Reports on exporting and importing monetary instruments

(a) * * *

* * * * * * *

(d) Cumulation of Closely Related Events.—The Secretary of the Treasury may prescribe regulations under this section defining the term "at one time" for purposes of subsection (a). Such regulations may permit the cumulation of closely related events in order that such events may collectively be considered to occur at one time for the purposes of subsection (a).

§ 5317. Search and forfeiture of monetary instruments

(a) * * *

* * * * * * *

(c) [A monetary instrument being transported may be seized and forfeited to the United States Government when a report on the instrument under section 5316 of this title has not been filed or contains a material omission or misstatement.] *If a report required under section 5316 with respect to any monetary instrument is not filed (or if filed, contains a material omission or misstatement of fact), the instrument and any interest in property, including a deposit in a financial institution, traceable to such instrument may be seized and forfeited to the United States Government.* A monetary instrument transported by mail or a common carrier, messenger, or bailee is being transported under this subsection from the time the instrument is delivered to the United States Postal Service, common carrier, messenger, or bailee through the time it is delivered to the addressee, intended recipient, or agent of the addressee or intended recipient without being transported further in, or taken out of, the United States.

(d) Seizure and Civil Forfeiture of Monetary Instruments Involved in Structured Transaction Violation.—

(1) In General.—Any—

(A) United States coins or currency (or such other monetary instrument as the Secretary of the Treasury may prescribe by regulation) involved in any violation of section 5313(a) or 5324; and

(B) interest in property, including a deposit in a financial institution, traceable to such coins or currency (or other monetary instrument),

may be seized and forfeited to the United States Government in the manner provided in subchapter C of chapter 75 of the Internal Revenue Code of 1954.

(2) Exception.—Paragraph (1) shall not apply if the owner of the property or the interest in property otherwise subject to seizure and forfeiture under paragraph (1) is—

(A) a bona fide purchaser for value who took without notice of the violation;

(B) a depository institution (as such term is defined in section 19(b)(1)(A) of the Federal Reserve Act); or

(C) a financial institution regulated by the Securities and Exchange Commission.

(3) HOLDS ON PROPERTY HELD BY FINANCIAL INSTITUTIONS.—Any—

(A) United States coins or currency (and such other monetary instruments as the Secretary of the Treasury may prescribe by regulation); and

(B) other interest in property, including any deposit,

which is in the possession or custody of any financial institution shall be held by such financial institution for a period of 15 days upon receipt of notice (in such form and in such manner as the Secretary shall prescribe) from the Secretary of the Secretary's intent to seize such coin or currency, instrument, or other property under this subsection.

(4) SEIZURE OF PROPERTY HELD BY FINANCIAL INSTITUTIONS.—Upon a showing by the Secretary of the Treasury that there is probable cause to believe that any coin or currency, monetary instrument, or other interest in property, including any deposit, which is in the possession or custody of any financial institution is subject to forfeiture under paragraph (1), the district court of the United States for the district in which such property is held may issue an order authorizing the Secretary to seize such property.

(5) EXEMPTION FROM LIABILITY FOR IMPOSITION OF HOLD.—The United States, any agency, department, or employee of the United States, any financial institution, and any officer, director, or employee of a financial institution shall be exempt from any liability to any other person which may otherwise arise for interest, damages, or any other type of compensation or relief, including injunctive and declaratory relief, in connection with or as a result of a hold being placed upon any property under paragraph (3).

(6) LIABILITY OF FINANCIAL INSTITUTION TO THE UNITED STATES FOR FAILURE TO COMPLY.—Any financial institution which—

(A) receives a notice under paragraph (3) with respect to any property or interest in property; and

(B) after receipt of such notice, fails or refuses to hold, without reasonable cause, such property or interests until the earlier of—

(i) the expiration of the 15-day period described in paragraph (3); or

(ii) the presentation by the Secretary of a court order issued under paragraph (4),

shall be liable to the United States for an amount which is equal to the value of the property or interests which such institution failed or refused to hold.

§ 5318. Compliance and exemptions

(a) GENERAL POWERS OF SECRETARY.—The Secretary of the Treasury may (except under section 5315 of this title and regulations prescribed under section 5315)—

(1) *except as provided in subsection (b)(2),* delegate duties and powers under this subchapter to an appropriate supervising agency;

(2) require a class of domestic financial institutions to maintain appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter; [and]

(3) examine any books, papers, records, or other data of financial institutions relevant to the recordkeeping or reporting requirements of this subchapter;

(4) summon a financial institution, an officer or employee of a financial institution (including a former officer or employee), or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (b); and

[(3)] *(5)* prescribe an appropriate exemption from a requirement under this subchapter and regulations prescribed under this subchapter. The Secretary may revoke an exemption by actually or constructively notifying the parties affected. A revocation is effective during judicial review.

(b) LIMITATIONS ON SUMMONS POWER.—

(1) SCOPE OF POWER.—The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection (a) only in connection with investigations for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National Housing Act, or chapter 2 of Public Law 91–508 (12 U.S.C. 1951 et seq.) or any regulation under any such provision.

(2) AUTHORITY TO ISSUE.—A summons may be issued under subsection (a)(4) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

(c) ADMINISTRATIVE ASPECTS OF SUMMONS.—

(1) PRODUCTION AT DESIGNATED SITE.—A summons issued pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the financial institution operates or conducts business in the United States,.

(2) FEES AND TRAVEL EXPENSES.—Persons summoned under the section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States.

(3) NO LIABILITY FOR EXPENSES.—The United States shall not be liable for any expense, other than an expense described in paragraph (2), incurred in connection with the production of books, papers, record, or other data under this section.

(d) SERVICE OF SUMMONS.—Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may prescribe by regulation.

(e) Contumacy or Refusal.—

(1) Referral to attorney general.—In case of contumacy by a person issued a summons under paragraph (3) or (4) of subsection (a) or a refusal by such persons to obey such summons, the Secretary of the Treasury shall refer the matter to the Attorney General.

(2) Jurisdiction of court.—The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which—

(A) the investigation which gave rise to the summons is being or has been carried on;

(B) the person summoned is an inhabitant; or

(C) the person summoned carries on business or may be found,

to compel compliance with the summons.

(3) Court order.—The court may issue an order requiring the persons summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was complied and maintained, and to pay the costs of the proceeding.

(4) Failure to comply with order.—Any failure to obey the order of the court may be punished by court as a contempt thereof.

(5) Service of process.—All process in any case uder this subsection may be served in any judicial district in which such person may be found.

(f) Review of Exemptions.—In any case in which there is a change in management or control of a financial institution, the Secretary of the Treasury shall review each currently outstanding exemption granted by such institution under subsection (a)(3) not later than 30 days after the date such change in management or control occurs.

(g) Written and Signed Statement Required.—No person shall qualify for an exemption under subsection (a)(5) unless the relevant financial institution—

(1) prepares and maintains a statement which—

(A) describes in detail the reasons why such person is qualified for such exemption; and

(B) contains the signature of such person; and

(2) certifies to the Secretary that such person is qualified for such exemption.

* * * * * * *

§ 5321. Civil penalties

(a)(1) A domestic financial institution, and a partner, director, officer, or employee of a domestic financial institution, [willfully violating] *who knowingly or with reckless disregard for a provision of this subchapter violates* this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315) is liable to the United States Government for a civil penalty of not more than $10,000. For a violation of section 5318*(a)*(2) of this title or a regulation prescribed under section 5318*(a)*(2), a speparate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

* * * * * * *

(4) STRUCTURED TRANSACTION VIOLATION.—

(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who knowingly or with reckless disregard for the provisions of section 5324 violates any provision of section 5324.

(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed the amount of the coins and currency (or such other monetary instruments as the Secretary may prescribe) involved in the transaction with respect to which such penalty is imposed.

(C) COORDINATION WITH FORFEITURE PROVISION.—The amount of any civil money penalty imposed by the Secretary under subparagraph (A) shall be reduced by the amount of any forfeiture to the United States under section 5317(d) in connection with the transaction with respect to which such penalty is imposed.

[(b) The Secretary may bring a civil action to recover a civil penalty under subsection (a)(1) or (2) of this section that has not been paid.]

(b) TIME LIMITATIONS FOR ASSESSMENTS AND COMMENCEMENT OF CIVIL ACTIONS.—

(1) ASSESSMENTS.—The Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.

(2) CIVIL ACTIONS.—The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at any time before the end of the 2-year period beginning on the later of—

(A) the date the penalty was assessed; or

(B) the date any judgment becomes final in any criminal action under section 5322 in connection with the same transaction with respect to which the penalty is assessed.

(c) The Secretary may remit any part of a forfeiture under [section 5317(b)] *subsection (c) or (d) of section 5317* of this title or civil penalty under subsection (a)(2) of this section.

§ 5322. Criminal penalties

(a) A person [willingly] *knowingly* violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315) shall be fined not more than $250,000, or imprisonment not more than five years or both.

(b) A person [willingly] *knowingly* violating this subchapter or a regulation prescribed under this subchapter (except section 5315 of this title or a regulation prescribed under section 5315), while violating another law of the United States or as part of a patten of illegal activity involving transactions of more than $100,000 in a 12-month period, shall be fined not more than [$500,000]

$1,000,000 if the person is an individual (and not more than $5,000,000 in any other case), imprisoned for not more than 5 years, or both.

(c) For a violation of section 5318*(a)*(2) of this title or a regulation prescribed under section 5318 *(a)*(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

* * * * * * *

§ 5324. Structuring transactions to evade reporting requirement prohibited

No person shall—

(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a);

(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions for the purpose of evading the reporting requirements of section 5313(a) with respect to such transaction.

§ 5325. Records of certain domestic coin and currency transactions

(a) RECORDS AUTHORIZED TO BE REQUIRED UNDER PARTICULAR CIRCUMSTANCES.—Under such circumstances as the Secretary of the Treasury may prescribe by regulation, the Secretary may issue an order requiring any domestic financial institution—

(1) to obtain such information as the Secretary may describe in such order concerning—

(A) any transaction in which such financial institution is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) in amounts or denominations of $3,000 or more; and

(B) any other person participating in such transaction;

(2) to maintain a record of such information for such period of time as the Secretary may require; and

(3) to file a report with respect to any transaction described in paragraph (1)(A) in the manner and to the extent specified in the order.

(b) RECORDS REQUIRED FOR CERTAIN CASH TRANSACTIONS INVOLVING MORE THAN $3,000.—

(1) IN GENERAL.—Whenever a domestic financial institution issues or sells a bank check, cashier's check, traveler's check, or money order in connection with a transaction which involves United States coins or currency in amounts or demoninations of more than $3,000, such financial institution shall—

(A) prepare and maintain, on a form prescribed by the Secretary of the Treasury, a record containing the information described in paragraph (2) with respect to each such transaction;

(B) obtain any information which is necessary for such record from the person to whom such check or money order is issued or sold; and

(C) obtain the signature of such person on such record.

(2) INFORMATION REQUIRED TO BE OBTAINED FOR RECORD.—The record required to be prepared under paragraph (1) with respect to any transaction shall contain the following information:

(A) The identity of the person to whom a check or money order described in paragraph (1) is issued or sold.

(B) The date, amount, number, and type of such check or money order.

(C) The method of payment for such check or money order by the person to whom such check or money order is issued or sold.

(D) The aggregate amount of checks or money orders described in paragraph (1) which were issued or sold to or on behalf of such person (by any financial institution) on the business day on which such transaction occurs, to the extent such aggregate amount exceeds $10,000.

(E) The name of the payee of such check or money order.

(F) Such other information as the Secretary may prescribe.

(3) REPORT REQUIRED IN CERTAIN CASES.—

(A) IN GENERAL.—If, in the case of a transaction with respect to which a record is required to be prepared by a financial institution under paragraph (1)—

(i) the aggregate amount described in paragraph (2)(D) is greater than $10,000; or

(ii) the person to whom a check or money order described in paragraph (1) is issued or sold refuses to provide the information necessary to determine such aggregate amount,

the transaction shall be treated as a transaction with respect to which a report is required to be filed under section 5313(a).

(B) RECORD REQUIRED TO BE FILED WITH REPORT.—The record prepared under paragraph (1) shall be filed with the report required under subparagraph (A) of this paragraph.

(C) NOTICE OF FAILURE TO PROVIDE AGGREGATE AMOUNT.—If a report is required under this paragraph because the person described in subparagraph (A)(ii) refused to provide the information required for purposes of paragraph (2)(D), the report shall include a notice of such refusal.

§ 5326. Information requirements

In each case in which a person is required to provide any information to a domestic financial institution or other person under any provision of this subchapter or any regulation prescribed under this *subchapter, the information provided by such person shall be complete and accurate with respect to all material facts.*

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INTERNAL REVENUE CODE OF 1954

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Subtitle F—Procedure and Administration

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CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

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Subchapter C—Forfeitures

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PART I—PROPERTY SUBJECT TO FORFEITURE

Sec. 7301. Property subject to tax.
Sec. 7302. Property used in violation of internal revenue laws *or title 31, United States Code.*
Sec. 7303. Other property subject to forfeiture.
Sec. 7304. Penalty for fraudulently claiming drawback.

* * * * * * *

SEC. 7302. PROPERTY USED IN VIOLATION OF INTERNAL REVENUE LAWS *OR TITLE 31, UNITED STATES CODE.*

It shall be unlawful to have or possess any property intended for use in violating the provisions of the internal revenue laws, or regulations prescribed under such laws, or which has been so used, and no property rights shall exist in any such property. A search warrant may issue as provided in chapter 205 of title 18 of the United States Code and the Federal Rules of Criminal Procedure for the seizure of such property. Nothing in this section shall in any manner limit or affect any criminal or forfeiture provision of the internal revenue laws, or of any other law. The seizure and forfeiture of any property under the provisions of this section and the disposition of such property subsequent to seizure and forfeiture, or the disposition of the proceeds from the sale of such property, shall be in accordance with existing laws or those hereafter in existence relating to seizures, forfeitures, and disposition of property or proceeds, for violation of the internal revenue laws. *The second and fourth sentences are hereby extended to coins, currency, and other monetary instruments (and to interests in property traceable to such instruments) seized pursuant to section 5317 of title 31, United States Code.*

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PART II—PROVISIONS COMMON TO FORFEITURES

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SEC. 7321. AUTHORITY TO SEIZE PROPERTY SUBJECT TO FORFEITURE.

Any property subject to forfeiture to the United States under any provision of this title *and any coins, currency, or other monetary instrument (and any interest in property traceable to such instrument) subject to forfeiture under section 5317 of title 31, United States Code,* may be seized by the Secretary.

* * * * * * *

SEC. 7327. CUSTOMS LAWS APPLICABLE.

The provisions of law applicable to the remission or mitigation by the Secretary of forfeitures under the customs laws shall apply to forfeitures incurred or alleged to have been incurred under the internal revenue laws *and to forfeitures of coins, currency, and other monetary instruments (or interests in property traceable to such instruments) incurred or alleged to have been incurred under section 5317 of title 31, United States Code (except that, in the case of forfeitures under such section 5317, the customs laws shall apply only to the extent such laws are not inconsistent with any applicable provision of such section).*

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CHAPTER 78—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

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Subchapter A—Examination and Inspection

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SEC. 7608. AUTHORITY OF INTERNAL REVENUE ENFORCEMENT OFFICERS.

(a) * * *

(b) ENFORCEMENT OF LAWS RELATING TO INTERNAL REVENUE OTHER THAN SUBTITLE E.—

(1) Any criminal investigator of the Intelligence Division or of the Internal Security Division of the Internal Revenue Service whom the Secretary charges with the duty of enforcing any of the criminal provisions of the internal revenue laws **[**or**]**, any other criminal provisions of law relating to internal revenue for the enforcement of which the Secretary is responsible, *or any provision of section 5317 of title 31, United States Code, relating to seizures and forfeitures of coins, currency, and other monetary instruments (and interests in property traceable to such instruments)* is, in the performance of his duties, authorized to perform the functions described in paragraph (2).

(2) The functions authorized under this subsection to be performed by an officer referred to in paragraph (1) are—

(A) * * *

(B) to make arrests without warrant for any offense against the United States relating to the internal revenue laws committed in his presence, or for any felony cognizable under such laws if he has reasonable grounds to believe that the person to be arrested has committed or is committing any such felony; [and]

(C) to make seizures of property subject to forfeiture under the internal revenue law[.]*; and*

(D) to make seizures of coins, currency, and other monetary instruments (and interests in property traceable to such instruments) subject to forfeiture under section 5317 of title 31, United States Code.

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FEDERAL DEPOSIT INSURANCE ACT

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Sec. 7. (a) * * *

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(j)(1) No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any insured bank through a purchase, assignment, transfer, pledge, or other disposition of voting stock of such insured bank unless the appropriate Federal banking agency has been given sixty days' prior written notice of such proposed acquisition and within that time period the agency has not issued a notice disapproving the proposed acquisition or [extending for up to another thirty], *in the discretion of the agency, extending for an additional 30* days the period during which such a disapproval may issue. [The period for disapproval may be further extended only if the agency determines that any acquiring party has not furnished all the information required under section (j)(6) or that in its judgment any material information submitted is substantially inaccurate.] *The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—*

(A) the agency determines that any acquiring party has not furnished all the information required under paragraph (6);

(B) in the agency's judgment, any material information submitted is substantially inaccurate;

(C) the agency has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

(D) the agency determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code.

An acquisition may be made prior to expiration of the disapproval period if the agency issues written notice of its intent not to disapprove the action. For purposes of this subsection (j), the term "insured bank" shall include any "bank holding company", as that term is defined in section 2 of the Bank Holding Company Act, which has control of any such insured bank, and the appropriate Federal banking agency in the case of bank holding companies shall be the Board of Governors of the Federal Reserve System.

(2) *(A)* *Notice to State Agency*.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall forward a copy thereof to the appropriate State bank supervisory agency if the bank the voting shares of which are sought to be acquired is a State bank, and shall allow thirty days within which the views and recommendations of such State bank supervisory agency may be submitted. The appropriate Federal banking agency shall give due consideration to the views and recommendations of such State agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this section (j)(2), if the appropriate Federal banking agency determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the probable failure of the bank involved in the proposed acquisition, such Federal banking agency may dispense with the requirements of this subsection (j)(2) or, if a copy of the notice is forwarded to the State bank supervisory agency, such Federal banking agency may request that the views and recommendations of such State bank supervisory agency be submitted immediately in any form or by any means acceptable to such Federal banking agency.

(B) Investigation of Principals Required.—Upon receiving any notice under this subsection, the appropriate Federal banking agency shall—

(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

(C) Report.—The appropriate Federal banking agency shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The agency shall retain such written report as a record of the agency.

(D) Public Comment.—Upon receiving notice of a proposed acquisition, the appropriate Federal banking agency shall, within a reasonable period of time—

(i) publish the name of the insured bank proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the bank proposed to be acquired is located, before final consideration of such notice by the agency,

unless the agency determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such bank.

* * * * * * *

(15) Investigative and Enforcement Authority.—

(A) Investigations.—The appropriate Federal banking agency may exercise any authority vested in such agency under

section 8(n) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the agency, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

(B) ENFORCEMENT.—Whenever it appears to the appropriate Federal banking agency that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

(C) JURISDICTION.—

(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the appropriate Federal banking agency under subparagraph (A) as such courts have under section 8(n).

(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief granted under this paragraph shall be granted without requiring the posting of any bond.

[15**]** *(16)* Any person who willfully violates any provision of this subsection, or any regulation or order issued by the appropriate Federal banking agency pursuant thereto, shall forfeit and pay a civil penalty of not more than $10,000 per day for each day during which such violation continues. The appropriate Federal banking agency shall have authority to assess such a civil penalty, after giving notice and an opportunity to the person to submit data, view, and arguments, and after giving due consideration to the appropriateness of the penalty with respect to the size of financial resources and good faith of the person charged, the gravity of the violation, and any data, views, and arguments submitted. The agency may collect such civil penalty by agreement with the person or by bringing an action in the appropriate United States district court, except that in any such action, the person against whom the penalty has been assessed shall have a right to trial de novo.

[16**]** *(17)* This subsection shall not apply to a transaction subject to section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) or section 18 of this Act (12 U.S.C. 1828). This subsection shall not apply to an insured Federal savings bank. (12 U.S.C. 1817)

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SEC. 8(a) * * *

* * * * * * *

(i)(1) * * *

(2)(i) Any insured bank which violates or an officer, director, employee, agent, or other person participating in the conduct of the affairs of such a bank who violates the terms of any order which has become final and was issued pursuant to subsection (b) [or (c)], *(c), or (s)* of this section, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues: *Provided*, That the agency having authority to impose a civil money penalty may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under such authority. The penalty may be assessed and collected by the appropriate Federal banking agency by written notice. As used in this section, the term "violate" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

* * * * * * *

(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

(1) COMPLIANCE PROCEDURES REQUIRED.—Each appropriate Federal banking agency shall prescribe regulations requiring insured banks to establish and maintain procedures reasonably designed to assure and monitor the compliance of such banks with the requirements of subchapter II of chapter 53 of title 31, United States Code.

(2) EXAMINATIONS OF BANKS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

(A) IN GENERAL.—Each examination of an insured bank by the appropriate Federal banking agency shall include a review of the procedures required to be established and maintained under paragraph (1).

(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the insured bank.

(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the appropriate Federal banking agency determines that an insured bank—

(A) has failed to establish and maintain the procedures described in paragraph (1); or

(B) has failed to correct any problem with the procedures maintained by such bank which was previously reported to the bank by such agency,

the agency shall issue an order in the manner prescribed in subsection (b) or (c) requiring such bank to cease and desist from its violation of this subsection or regulations prescribed under this subsection.

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SEC. 21. (a) * * *

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(j) CIVIL AND CRIMINAL PENALTIES.—

(1) CIVIL PENALTY.—Any insured bank and any director, officer, or employee of an insured bank who knowingly or with reckless disregard for any regulation prescribed under subsection (b) of this section violates any such regulation shall be liable to the United States for a civil penalty of not more than $10,000. Any penalty imposed under this paragraph shall be assessed, mitigated, and collected in the manner provided in subsections (b) and (c) of section 5321 of title 31, United States Code.

(2) CRIMINAL PENALTY.—Whoever knowingly violates subsection (b) of this section or any regulation prescribed under such subsection shall be fined not more than $250,000 or imprisoned for not more than 5 years, or both

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SECTION 5 OF THE HOME OWNERS' LOAN ACT OF 1933

FEDERAL SAVINGS AND LOAN ASSOCIATIONS

SEC. 5. (a) * * *

* * * * * * *

(d)(1) * * *

* * * * * * *

(8)(A) * * *

(B)(i) Any association which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such an association who violates the terms of any order which has become final and was issued pursuant to paragraph (2) [or (3)], *(3), or (16)* of this subsection, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues: *Provided,* That the Board may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Board by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

* * * * * * *

(16) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

(A) COMPLIANCE PROCEDURES REQUIRED.—The Board shall prescribe regulations requiring associations to establish and maintain procedures reasonably designed to assure and monitor the compliance of such associations with the requirements of subchapter II of chapter 53 of title 31, United States Code.

(B) EXAMINATIONS OF ASSOCIATIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

(i) IN GENERAL.—Each examination of an association by the Board shall include a review of the procedures required to be established and maintained under subparagraph (A).

(ii) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the association.

(C) ORDER TO COMPLY WITH REQUIREMENTS.—If the Board determines that an association—

(i) has failed to establish and maintain the procedures described in subparagraph (A); or

(ii) has failed to correct any problem with the procedures maintained by such association which was previously reported to the association by the Board,

the Board shall issue an order in the manner prescribed in paragraph (2) or (3) requiring such association to cease and desist from its violation of this paragraph or regulations prescribed under this paragraph.

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NATIONAL HOUSING ACT

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TITLE IV—INSURANCE OF SAVINGS AND LOAN ACCOUNTS

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SEC. 407. TERMINATION OF INSURANCE AND ENFORCEMENT PROVISION.—

(a) * * *

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(k) JURISDICTION AND ENFORCEMENT.—(1) * * *

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(3)(A) Any insured institution or any institution any of the accounts of which are insured which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of such an institution who violates the term of any order which has become final and was issued pursuant to subsection (e) **[**or (f) of this section shall forfit**]**, *(f), or (s) of this section shall forfeit* and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues: *Provided,* That the Corporation may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Corporation by written notice. As used in this section, the term "violates" includes without any limitation any action (along or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

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(q)(1) No person, acting directly or indirectly or through or in concert with one or more other persons, shall acquire control of any insured institution through a purchase assignment, transfer, pledge, or other disposition of voting stock of such insured institution unless the Corporation has been given sixty days prior written notice of such proposed acquisition and within that time period the Corporation has not issued a notice disapproving the proposed acquisition or [extending up to another thirty], *in the discretion of the Corporation, extending for an additional 30* days the period during which a disapproval may issue. [The period for disapproval may be further extended only if the Corporation determines that any acquiring party has not furnished all the information required under subsection (q)(6) or that in its judment any material information submitted is substantially inaccurate.] *The period for disapproval under the preceding sentence may be extended not to exceed 2 additional times for not more than 45 days each time if—*

(A) the Corporation determines that any acquiring party has not furnished all the information required under paragraph (6);

(B) in the Corporation's judgment, any material information submitted is substantially inaccurate;

(C) the Corporation has been unable to complete the investigation of an acquiring party under paragraph (2)(B) because of any delay caused by, or the inadequate cooperation of, such acquiring party; or

(D) the Corporation determines that additional time is needed to investigate and determine that no acquiring party has a record of failing to comply with the requirements of subchapter II of chapter 53 of title 31, United States Code.

An acquisition may be made prior to expiration of the disapproval period if the Corporation issues written notice of its intent not to disapprove the action. For purposes of this subsection (q), the term "insured institution" shall include any "savings and loan holding company", as that term is defined in section 408 of the National Housing Act, which has control of any such insured institution.

(2)*(A) NOTICE TO STATE AGENCY.*—Upon receiving any notice under this subsection, the Corporation shall forward a copy thereof to the appropriate State savings and loan association supervisory agency if the insured institution the voting shares of which are sought to be acquired is a State chartered institution, and shall allow thirty days within which the views and recommendations of such State supervisory agency may be submitted. The Corporation shall give due consideration to the views and recommendations of such State agency in determining whether to disapprove any proposed acquisition. Notwithstanding the provisions of this subsection (q)(2), if the Corporation determines that it must act immediately upon any notice of a proposed acquisition in order to prevent the probable failure of the institution involved in the proposed acquisition, the Corporation may dispense with the requirement of this subsection (l)(2) or, if a copy of the notice is forwarded to the State supervisory agency, the Corporation may request that the views and recommendations of such State supervisory agency be submitted immediately in any form or by any means acceptable to the Corporation.

(B) INVESTIGATION OF PRINCIPALS REQUIRED.—Upon receiving any notice under this subsection, the Corporation shall—

(i) conduct an investigation of the competence, experience, integrity, and financial ability of each person named in a notice of a proposed acquisition as a person by whom or for whom such acquisition is to be made; and

(ii) make an independent determination of the accuracy and completeness of any information described in paragraph (6) with respect to such person.

(C) REPORT.—The Corporation shall prepare a written report of any investigation under subparagraph (B) which shall contain, at a minimum, a summary of the results of such investigation. The Corporation shall retain such written report as a record of the Corporation.

(D) PUBLIC COMMENT.—Upon receiving notice of a proposed acquisition, the Corporation shall, within a reasonable period of time—

(i) publish the name of the insured institution proposed to be acquired and the name of each person identified in such notice as a person by whom or for whom such acquisition is to be made; and

(ii) solicit public comment on such proposed acquisition, particularly from persons in the geographic area where the institution proposed to be acquired is located, before final consideration of such notice by the Corporation,

unless the Corporation determines in writing that such disclosure or solicitation would seriously threaten the safety or soundness of such institution.

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(16) INVESTIGATIVE AND ENFORCEMENT AUTHORITY.—

(A) INVESTIGATIONS.—The Corporation may exercise any authority vested in the Corporation under paragraph (2) or (3) of subsection (m) in the course of conducting any investigation under paragraph (2)(B) or any other investigation which the Corporation, in its discretion, determines is necessary to determine whether any person has filed inaccurate, incomplete, or misleading information under this subsection or otherwise is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection.

(B) ENFORCEMENT.—Whenever it appears to the Corporation that any person is violating, has violated, or is about to violate any provision of this subsection or any regulation prescribed under this subsection, the agency may, in its discretion, apply to the appropriate district court of the United States or the United States court of any territory for—

(i) a temporary or permanent injunction or restraining order enjoining such person from violating this subsection or any regulation prescribed under this subsection; or

(ii) such other equitable relief as may be necessary to prevent any such violation (including divestiture).

(C) JURISDICTION.—

(i) The district courts of the United States and the United States courts in any territory shall have the same jurisdiction and power in connection with any exercise of any authority by the Corporation under subparagraph (A) as such courts have under paragraph (2) or (3) of subsection (m).

(ii) The district courts of the United States and the United States courts of any territory shall have jurisdiction

and power to issue any injunction or restraining order or grant any equitable relief described in subparagraph (B). When appropriate, any injunction, order, or other equitable relief under this paragraph shall be granted without requiring the posting of any bond.

[(16)**]** *(17)* Any person who willfully violates any provision of this subsection, or any regulation or order issued by the Corporation pursuant thereto, shall forfeit and pay a civil penalty of not more than $10,000 per day for each day during which such violation continues. The Corporation shall have authority to assess such a civil penalty, after giving notice and an opportunity to the person to submit data, views, and arguments, and after giving due consideration to the appropriateness of the penalty with respect to the size of financial resources and good faith of the person charged, the gravity of the violation, and any data, views, and arguments submitted. The agency may collect such civil penalty by agreement with the person or by bringing an action in the appropriate United States district court, except that in any such action, the person against whom the penalty has been assessed shall have a right to trial de novo.

[(17)**]** *(18)* This subsection shall not apply to a transaction subject to section 408 of this Act. (12 U.S.C. 1730(a).

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(s) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

(1) COMPLIANCE PROCEDURES REQUIRED.—The Corporation shall prescribe regulations requiring insured institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such institutions with the requirements of subchapter II of chapter 53 of title 31, United States Code.

(2) EXAMINATIONS OF INSTITUTIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

(A) IN GENERAL.—Each examination of an insured institution by the Corporation shall include a review of the procedures required to be established and maintained under paragraph (1).

(B) EXAM REPORT REQUIREMENT.—The report of examination shall describe any problem with the procedures maintained by the insured institution.

(3) ORDER TO COMPLY WITH REQUIREMENTS.—If the Corporation determines that an insured institution—

(A) has failed to establish and maintain the procedures described in paragraph (1); or

(B) has failed to correct any problem with the procedures maintained by such institution which was previously reported to the institution by the Corporation,

the Corporation shall issue an order in the manner prescribed in subsection (e) or (f) requiring such institution to cease and desist from its violation of this subsection or regulations prescribed under this subsection.

* * * * * * *

SEC. 411. The Secretary of the Treasury shall prescribe such regulations as may be appropriate to carry out, with respect to insured institutions, the purposes set forth in section 21 of the Federal Deposit Insurance Act with respect to insured banks. *The penalties provided in subsection (j) of section 21 of the Federal Deposit Insurance Act for violations of any regulation prescribed under subsection (b) of such section shall apply with respect to any violation of any regulation prescribed under this section which corresponds to the regulation prescribed under such subsection (b).*

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SECTION 206 OF THE FEDERAL CREDIT UNION ACT

TERMINATION OF INSURANCE CEASE-AND-DESIST PROCEEDINGS; SUSPENSION AND/OR REMOVAL OF DIRECTORS, OFFICERS, AND COMMITTEE MEMBERS; TAKING POSSESSION OF COMMITTEE MEMBERS

SEC. 206. (a) * * *

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(k) (1) * * *

(2)(A) Any insured credit union which violates or any officer, director, committee member, employee, agent, or other person participating in the conduct of the affairs of such a credit union who violates the terms of any order which has become final and was issued pursuant to subsection (e) [or (f)], *(f), or (q)* of this section, shall forfeit and pay a civil penalty of not more than $1,000 per day for each day during which such violation continues: *Provided,* That the Board may, in its discretion, compromise, modify, or remit any civil money penalty which is subject to imposition or has been imposed under authority of this subsection. The penalty may be assessed and collected by the Board by written notice. As used in this section, the term "violates" includes without any limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

* * * * * * *

(q) COMPLIANCE WITH MONETARY TRANSACTION RECORDKEEPING AND REPORT REQUIREMENTS.—

(1) COMPLIANCE PROCEDURES REQUIRED.—The Board shall prescribe regulations requiring insured credit unions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such credit unions with the requirements of subchapter II of chapter 53 of title 31, United States Code.

(2) EXAMINATIONS OF CREDIT UNIONS TO INCLUDE REVIEW OF COMPLIANCE PROCEDURES.—

(A) IN GENERAL.—Each examination of an insured credit union by the Board shall include a review of the procedures required to be established and maintained under paragraph (1).

(B) Exam report requirement.—The report of examination shall describe any problem with the procedures maintained by the credit union.

(3) Order to comply with requirements.—If the Board determines that an insured credit union—

(A) has failed to establish and maintain the procedures described in paragraph (1); or

(B) has failed to correct any problem with the procedures maintained by such credit union which was previously reported to the credit union by the Board,

the Board shall issue an order in the manner prescribed in subsection (e) or (f) requiring such credit union to cease and desist from its violation of this subsection or regulations prescribed under this subsection.

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Right to Financial Privacy Act of 1978

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CONFIDENTIALITY OF RECORDS—FINANCIAL INSTITUTIONS

Sec. 1103. (a) * * *

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(c) Nothing in this title shall preclude any financial institution, or any officer, employee, or agent of a financial institution, from notifying a Government authority that such institution, or officer, employee, or agent has information which may be relevant to a possible violation of any statute or regulation. *The information which a financial institution, or any officer, employee, or agent of a financial institution, may provide under this subsection shall be limited to the names, addresses, and account numbers of persons, information concerning the persons and acts involved in any possible violation, and the nature of and a description of the possible violation. No information provided under this subsection may include financial records or, except to the extent provided in the preceding sentence, information identified with, or identifiable as being derived from, the financial record of any particular customer. Such information may be so disclosed notwithstanding the constitution of any State or any State or local law.*

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EXCEPTIONS

Sec. 1113. (a) * * *

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(l) Crimes Against Financial Institutions by Insiders.—Nothing in this title shall prohibit any financial institution or supervisory agency from providing any financial record of any officer, director, employee, or controlling shareholder (within the meaning of subparagraph (A) or (B) of section 2(a)(2) of the Bank Holding Company Act of 1956 or subparagraph (A) or (B) of section 408(a)(2) of

the National Housing Act) of such institution to the Attorney General of the United States, to a State law enforcement agency, or, in the case of a possible violation of subchapter II of chapter 53 of title 31, United States Code, to the Secretary of the Treasury if there is reason to believe that such record is relevant to a possible violation by such individual of—

(1) any law relating to crimes against financial institutions or supervisory agencies by directors, officers, employees, or controlling shareholders of financial institutions; or

(2) any provision of subchapter II of chapter 53 of title 31, United States Code.

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SUPPLEMENTAL VIEWS OF HON. AL McCANDLESS, HON. DAVID DREIER, HON. NORMAN D. SHUMWAY, AND HON. JIM KOLBE TO H.R. 5176, MONEY LAUNDERING CONTROL ACT OF 1986

We voted in favor of reporting H.R. 5176 to the House because we are convinced this Congress must act to address the growing problem of drug sales and other illegal activities in our society. One of the best ways to address that issue is by making it far more difficult for criminal elements to hide and utilize the proceeds of their illicit activities. H.R. 5176 goes a long way towards that goal.

In making it more difficult for criminals to hide and utilize their illegally derived proceeds, however, we must be careful to strike a delicate balance between the rights of the vast majority of innocent citizens and the need to stop criminals from preying on society. Portions of H.R. 5176 give us cause for concern that we may have tilted that balance in the wrong direction in certain specific areas.

First, section 8 of the bill provides the Secretary of the Treasury with broad new authority to investigate virtually any transaction involving a transfer of funds in excess of $3,000. That authority is open ended. It permits the Secretary, for any reason and in his sole discretion, to order a financial institution (which is defined, under the Bank Secrecy Act, as banks, insurance companies, stock and bond brokers and dealers, credit card companies, and a host of other entities) to file a detailed report on any customer's transactions in excess of $3,000. He could even require the institution to detail all information it has concerning all parties to the transaction which are not its actual customers. Such an order could be issued by the Secretary without recourse by the institution or the parties involved. We are not convinced that such broad power in the hands of a government official is necessary or wise, and have strong reservations about giving the federal government virtually free rein to roam through the most intimate financial affairs of all private citizens.

Another area of our concern involves section 6. That section would add a new definition to the Bank Secrecy Act to extend its applicability to "any foreign subsidiary or affiliate, as defined by the Secretary" of any financial institution defined in the Bank Secrecy Act. This provision is intended to reach currency transactions worldwide, and to require global reporting of currency transactions by all foreign and domestic institutions and their subsidiaries and affiliates, wherever located, as long as they have a corporate nexus to the United States. It could, for example, require a British bank which owns a U.S. bank to file reports to the U.S. Treasury Department on British citizens conducting transactions in its British offices. It would also require U.S. institutions operating overseas to file reports on citizens of its host country. This seems to us to overstep the bounds of the sovereignty of other nations. We question whether we would stand still if another country attempted to gather and maintain such information on U.S. citizens. If Britain, or France, or Germany, or any other nation attempted to tell a U.S. bank that it must report to that nation's central bank on transactions of the bank's U.S. customers, simply because the bank maintained a subsidiary or affiliate in that country, we would find it presumptuous in the extreme. Furthermore, section 6, in many cases, will place institutions in the untenable position of violating one country's laws in order to comply with another's. Indeed, if exercised to its fullest, the authority to extend the applicability of the act to such extraterritorial lengths may require large-scale disinvestment by foreign institutions in the U.S. and by U.S. institutions worldwide.

We do not doubt that having the information contemplated by section 6 would assist the U.S. Treasury Department in tracking laundered money. But at some point we must question whether obtaining that information at the expense of violating established precepts of international law and the rights of other sovereign nations justifies the result.

Yet another concern centers on section 2 of the bill, which attempts to address the problem of "smurfing." Smurfing is the practice of breaking up large transactions for the purpose of avoiding the $10,000 reporting requirement under the Bank Secrecy Act. We are absolutely in favor of outlawing such activity. However, we are concerned that section 2 may go too far beyond that purpose. Section 2, as drafted, would prohibit any person from causing or attempting to cause a financial institution to fail to file a currency transaction report. Additionally, causing a financial institution to file a report with misstatements of material fact would be a violation. Unfortunately, no intent to evade the reporting requirements is necessary to constitute a violation. Thus, we are concerned that the bill will make a violator out of an individual misstating his or her social security number while trying to recite it from memory. Likewise, a clerk who hits the wrong typewriter key while completing a currency transaction report may be in violation of the Act, as may the financial institution for which the clerk works. Similarly, with no intent to evade the reporting requirements, an individual making multiple deposits in different accounts at different branches of the same institution during the day, will violate the Act if the deposits aggregate in excess of $10,000 and the institution does not itself have the capability or otherwise fails to identify the aggregate deposits. Such types of innocent conduct should not be the subject of the severe penalties we provide for violations of the Bank Secrecy Act.

Finally, we are concerned about the elimination of the need for intent to constitute a criminal or civil violation of the Bank Secrecy Act. Under current law, an individual or a financial institution must act "willfully" in order to constitute a criminal or civil violation of the Act. That means that an individual must know a transaction requires a report to be filed and must consciously decide not to file the report. Considering the severity of the penalties involved (up to $1,000,000 and 5 years imprisonment for individuals or $5,000,000 for institutions for criminal violations; and up to $10,000 for civil violations) that would appear to us to be an appropriate standard. Yet section 9 of the bill would reduce that standard so that individuals or institutions must merely act "knowingly" to constitute a criminal violation, or must act "knowingly *or* with reckless disregard for the provisions of the Act" [emphasis added] to constitute a civil violation.

With regard to the new criminal standard, we question whether we should impose penalties of the severity of this bill without the requirement of a criminal intent to constitute a violation. A "knowing" standard will cast the criminal net too wide and will subject conduct which is not criminal in nature to severe criminal penalties. As a simple and probably not uncommon example, consider a financial institution employee who is interrupted while filling out a required report. He places the report in his desk drawer, and then fails to remember it until he finds it in his drawer three weeks later. That would constitute a "knowing" violation. While we may wish to subject such action to civil penalties, we see no need for subjecting such an individual to the spectre of 5 years imprisonment and a $1,000,000 fine. Yet, that is what section 9 would do.

Similarly, we are not sure what the concept of "reckless disregard" represents in the context of civil violations of the Act. Does it encompass an individual unintentionally giving wrong information to a financial institution for its reports? Does it include clerical or other errors by employees of institutions in filing reports? We must remember that this legislation will affect literally tens of millions of transactions in this country, and possibly around the world. Errors are unavoidable. At what point are we placing individuals on notice that their errors are unacceptable and that they must be prepared to pay a heavy price? The standards currently in place for violations of the Act appear to be working well.

As stated earlier, this Congress must act to address the growing problem of drug sales and other illegal activities in our society, and attacking the profits of those engaged in such activities is one of the most effective means of doing so. The Banking Committee spent days investigating and reviewing this issue. Unfortunately, the expedited timetable for subcommittee and full committee mark-up did not permit much time to review and analyze this bill. Nevertheless, we voted to report this bill in order to move this legislation toward enactment. However, we felt compelled to make our concerns known in the hopes that they may be more fully addressed in the continued legislative consideration of this issue.

AL McCANDLESS.
DAVID DREIER.
NORMAN D. SHUMWAY.
JIM KOLBE.

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